

THE COMPLEAT  
CHANCERY-PRACTISER:  
OR, THE

Whole Proceedings and Practice of the High  
Court of *Chancery*, in a perfect NEW Manner.

CONTAINING,

The Original, Extent and Authority of that  
High and Honourable Court, with the *Rules*  
and *Methods* of PRACTICE therein, as  
well in the *Petty-Bag-Office* according to the  
Common Law, as in all *Suits in Equity*, from  
the Bill in Chancery to the Decree in the Cause.

AND ALSO

PRECEDENTS of Bills, Answers, Pleas and  
Demurrers, Replications, Rejoinders, Interrogato-  
ries and Depositions of Witnesses, Decrees, &c.  
And of Affidavits, Petitions, Reports, Orders, In-  
junctions, Writs and Processes in all Cases.

Together with

Bills of *Review* and to *Reverse* Decrees, and *Appeals*  
from Decrees of the Chancery to the Lords in Par-  
liament.

LIKEWISE

Extraordinary adjudg'd Cases, shewing wherein Relief  
may be given in *Equity*, &c.

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Of the greatest Use to all Gentlemen at the Bar, Attornies and  
Solicitors, and Officers and Clerks of the Court of Chancery.

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V O L. II.

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Defences, Replications, Joinders, Demurs, and  
other and Depositions, Interrogatories, Decrees, and  
Orders in the said Court.



With a Table of the several Acts of Parliament  
and Orders of the said Court, and of the  
High Court of Admiralty, in Particular.

By WILLIAM BISHOP

Attorney at Law, and of the said Court of Chancery.  
Printed by J. Sturges, at the Sign of the Anchor, in  
St. Dunstons Church-yard, near the Temple.

Of the printed Edition of this Work, at the End of the  
Subscription, and of the said Court of Chancery.

VOL. II.

In the 22d Year of the said King's Majesty, viz. 1739,  
at the City of London, in the County of Middlesex,  
the said William Bishop, Attorney at Law, and of the  
said Court of Chancery, has caused this Second  
Edition of the said Work to be printed, and to be  
sold by J. Sturges, at the Sign of the Anchor, in  
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THE COMPLEAT

*Chancery-Practiser:*

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V O L. II.

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*Of Interrogatories and Commissions to examine Witnesses, and of Depositions taken.*

**I**Nterrogatories, and Depositions of Witnesses, are now to be treated of, after the Bill, Answer, Plea, Demurrer, Replication, &c. in order to hear and determine the Cause: And Interrogatories are Questions exhibited in Writing by the Party, Plaintiff or Defendant, or directed by the Court, to be proposed to and asked of the Witnesses in a Cause touching the

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Merits thereof, or some Incident therein. Also Interrogatories are touching Contempts of Writs, Processes and Orders of Court, whereupon the Party offending is to be examined concerning such Contempt, &c.

As on Hearings by Bill and Answer, no Evidence is to be admitted (except Matters of Record) but what arises from the Bill and Answer itself; so when the Parties proceed to the Examination of Witnesses, the Cause is determined by such Evidence as arises from the Depositions of Witnesses examined upon Interrogatories; which Interrogatories are either *direct*, i. e. exhibited on the Behalf of the Party that produces the Witnesses; or they are *counter*, proposed on the Behalf of the adverse Party: And both the Plaintiff and Defendant may ordinarily exhibit, direct and counter Interrogatories; for when Parties are at Issue, it is necessary to consider, as well what the other Side may examine unto, as what our selves can prove, and so counter or cross Interrogatories may be drawn if there be Occasion.

All Interrogatories must be drawn or perused, and signed by Counsel; and they are to be short and pertinent, and necessary to the Point: They must not be leading, as *did you not do, or see such a Thing?* &c. If they are such, the Depositions taken thereon will be suppressed; and so it is where Interrogatories are too particular, or point to one Side of the Question more than the other. Interrogatories are to be engrossed in Parchment, and must be exhibited before any Witnesses examined on either  
Side:



Side: And if the Witnesses be to be examined before an Examiner of the Court, the Interrogatories must be produced before, and left with him: If in the Country on a Commission, Interrogatories are to be either annexed to the Commission at the issuing thereof, or by Consent of Parties they may be exhibited before the Commissioners on opening the Commission, which is now the general Practice. 'Tho' 'tis said that heretofore the Interrogatories were always included in the Commission. *Ord. Canc.* 216, 217.

The Witnesses within ten Miles of *London*, are examined on Interrogatories by the *Examiners* of the Court of Chancery; but the Witnesses must be sworn before a Master of Chancery. After a perfect Answer, &c. put in, either Party, until Publication is past, may examine in Court what Witnesses he will, that are not before examined; but not before Answer, without special Order: And after Publication, neither Party shall examine any Witnesses but by special Order of Court upon good Cause shewn, made out by Affidavit. If a Witness be examined by Commissioners in the Country on Interrogatories, he shall not be examined again in Court, without a special Order obtained. When Witnesses are examined in Court upon a Schedule of Interrogatories, there shall be no new Interrogatories put in to examine the same Witnesses; tho' new Interrogatories may be exhibited in Court for examining new Witnesses at any Time before Publication, notwithstanding there has been a joint Commission executed in the Country. And on a Supplemental Bill, the Court will upon

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Motion give Leave to add to the first Interrogatories, so as the new Interrogatories contain nothing but what relates to the supplemental Matter. *Ord. Canc.* 126.

No Re-examination of Witnesses is allowed, tho' upon the same Interrogatories, without Leave of the Court. But if either Party have a Commission *de novo*, after he hath examined on a former, he must examine on the same Interrogatories as were exhibited by him on the first Commission; and no other Interrogatories will be admitted, without Order, or Consent of the Parties. If Leave is given to examine a Witness after Publication, and before Hearing, a Master of Chancery is commonly ordered to settle the Interrogatories; and that they may be to such Points only as were omitted before, and which are now ordered to be examined unto. And tho' by the Orders of the Court, the Parties are to make their full Proof before Publication and Hearing of the Cause; yet after Hearing, if there be a Reference to a Master for stating an Account, &c. he may direct the Parties to draw Interrogatories to such Points as are needful to be proved to ground his Report upon, and examine thereupon in Court, or by Commission into the Country, &c. And the more common Way at this Time is not to examine to a Matter of Account before Hearing; but after, before a Master, if the Witnesses be in Town or near; if not, then by Commission to be directed by the Master, &c. And either Party may be examined to an Account, or to a particular Thing, after Hearing. *Ord. Canc.* 156.

If

If a Cause be depending by Bill in this Court, and the Plaintiff would have the Defendant sworn and examined upon Interrogatories, and the Defendant will do so; the Court will compel the Plaintiff to stand to the Defendant's Depositions, or else the Defendant is not to be examined, except some new Act be done by the Defendant after the Issue joined, as a Feoffment made, a Release by Covin, &c. long after the Parties have pleaded on both Sides; for in such Case, the Plaintiff may compel the Defendant to be examined. When Witnesses have been examined in a Cause, you may afterwards examine the Defendant, on an Order to that Purpose; which may be done either before or after Hearing: But his Depositions will be ordinarily conclusive; and where a Defendant is first examined, the Plaintiff may not afterwards examine Witnesses to prove him perjured. A Defendant, by Motion of Court being struck out of a Bill before Answer, may be examined on Interrogatories as an ordinary Witness; and so he may after Answer, upon paying Costs for the Dismissal as to him: But if he has answered, and the Plaintiff is in Doubt whether he will be a good Witness for him or not, or whether he may upon Hearing be found a necessary Party, he may let him stand in the Bill, and have an Order to examine him *de bene esse*. 2 *Chanc. Cas.* 214.

One Commissioner may be examined as a Witness by the other Commissioners, so as he be first examined, before any others have past Examination in his Presence. But a Counsellor in the Cause, or his Clerk, are not to be examin-



ed; nor shall an Attorney, or Solicitor, be examined on any Interrogatories which may compel him to answer any Matter that comes to his Knowledge, as being concern'd in the Cause; but for other Matters, not touching the Secrets of Clients Causes, it is said they may be examined. In some Cases a Wife hath been examined as a Witness against her Husband, where it was to discover her Husband's Deceit or Fraud; as in the Case of Bankrupts, &c. A Defendant having examined his own Wife as a Witness for him, it was ordered that the Plaintiff might take out a *Subpœna* against her on his Behalf; and if the Defendant would not suffer her to be examined for the Plaintiff, then her Depositions taken on the Defendant's Part to stand suppress'd. *Cary's Rep.* 81. 127, &c.

*Depositions.* In the Chancery Things are proved either by *Depositions* of Witnesses, by Deeds and other Writings made Exhibits in the Cause, or by Witnesses examined in Court *viva voce* on Interrogatories: And Witnesses cannot generally prove any thing that ought to be produced in Writing, as Deeds, Records, Writs, &c. It is said Peers of the Realm, as well as other Persons, giving their Testimony, are to be examined on Oath; tho' they answer only upon their Honour. And where a Defendant by his Answer denies an Agreement alledged in an original Bill, &c. one Witness will not be sufficient to prove it; for it is but Oath against Oath. 1 *Chan. Cas.* 8. If a Person be disabled at Law to be a Witness, and not competent, he may be excepted against before he is examined; tho' if both

both Parties examine him, neither of them can afterwards object against him. A Witness refusing to be cross examined upon Interrogatories, 'tis a Cause of Exception to his Testimony; and the Court on Motion will suppress his Depositions *ex parte*, as it argues Favour and Partiality. *Chan. Cas.*

If a Witness has deposed falsely in part upon the Interrogatories, and his Depositions contain manifest Contrarieties, his Depositions shall be wholly rejected. Also where a Witness's Depositions on one Side contradict his Depositions on the other Side, he will be ordered to attend the Court that he may explain himself; and if he cannot set the Matter right, his Depositions on both Sides will be suppressed. Where it is apparent from Books, Accounts, &c. that a Witness has been mistaken in his Depositions, 'tis good Cause to be shewn to the Court, why he should be re-examined, &c. but after Publication, the Court will not suffer a Deposition mistaken to be amended: And altho' after Publication Depositions may be explained; they may not be contradicted by new Proof. Also no Exceptions can be taken to Witnesses, after Publication of their Depositions: And if either Party is minded to examine to the Credit of the other's Witnesses, he must upon Exception filed in due 'Time, have an Order for so doing; which is sparingly to be granted. 1 *Chan. cas.* 25, 128. *Hard. Rep.* 180. *Kelv.* 100.

On Affidavit made by the Plaintiff, that since Publication he had divers Witnesses (naming them particularly) come to his Knowledge,

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which he knew not of before; the Court ordered that he might examine them on Interrogatories before the Examiner, *ad Informandum Conscientiam judicis*; and the Court at the Hearing, when they are in Doubt, doth sometimes order Witnesses to be examined *ad informand. Conscientiam, &c.* These Depositions of Witnesses examined only to inform the Conscience of the Chancellor, are to be delivered to him sealed, that he alone may pursue the same; and they are never published but by Consent, or by some special Order of Court. Depositions are not to be suppressed upon a bare Petition only, without a Reference to a Master; nor on Motion, without such Reference, unless Male Practice, or some great Irregularity, plainly appears to the Court: And no Motion shall be made in Court, nor Petition preferred for suppressing of Depositions irregularly taken, until two of the Six Clerks (not towards the Cause) have been attended with the Complaint of the Party grieved, and shall certify the true State of the Fact to the Court, for which Purpose a Rule is to be entered with the Register for attending the said Six Clerks, which shall be the Warrant for their Certificate, &c. *Ord. Canc.* 134.

The Copies of all Depositions of good Witnesses regularly taken in a Cause after Answer, and duly kept, published and signed, may ordinarily be read as Evidence: And the Depositions taken on Interrogatories in one Cause, may be used at the Hearing of another Cause between the same Parties, touching the same Matters, without any Motion; but as to Depositions  
in

in a Cause between other Parties, tho' they are relating to the same Matters, they are not to be read except by special Order; and Depositions in other Courts, shall not be read, without such Order.

Each Side is to exhibit Interrogatories for the examining of Witnesses, and taking their Depositions thereupon; and the Court dislikes the Practice of examining the Defendant's Witnesses on the Plaintiff's Interrogatories, or *econtra*.

*Of Commissions for examining Witnesses, and the Manner of their Execution, &c.*

A Commission to examine Witnesses to the Merits of the Cause, is not usually granted 'till the Cause is at Issue; and before it is granted, the Plaintiff is generally to reply, and serve the Defendant with a *Subpæna* to rejoin, and upon Return of it give an eight Days Rule for that Purpose; which the Defendant having done, and the Time of the Rule being expired, the Plaintiff may give two ordinary Return-Days for the Defendant to produce his Witnesses, and then appoint a peremptory Day, before which the Defendant may join in the Commission with the Plaintiff; or if he do not do it, the Plaintiff may proceed alone in the Commission: And if the Plaintiff doth not think fit to join in Commission, the Defendant, on Petition or Motion, may of Course have one *Ex parte*. If the Parties go to Commission by Consent, there needs no *Subpæna* to rejoin: And if the Plaintiff be minded to go to Hearing on Bill and Answer, then



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then he neither Replies, nor takes out any Commission, &c.

On going to Commission, the Party entitled to the same, his Clerk or Deputy, calls upon the other Party's Clerk for four Commissioners Names, which are to be given unto him, and then he leaves with the other Clerk four Names likewise; and after the Clerks on both Sides have consulted the Clients or their Solicitor, they each strike out two of the four Names which had been given in and delivered, in Manner following; first, he that has the Carriage of the Commission strikes out one of those that were named by the other Side, then the other strikes out one of those that were named by him, and so each of them strikes out one more, and the four remaining are the Commissioners. If the adverse Party does not give or strike Names in Time, in such Case he who is to have the Carriage of the Commission may by Order upon Motion, name all the four Commissioners, and have a Commission *ex parte*; which is to be granted where the Commissioners Names are called for in Term, if the Defendant's Clerk refuses or delays joining in Commission, &c. till the second Seal after Term.

After the Names of Commissioners have been struck out as aforesaid, Exception may be taken to those remaining; and the usual Exceptions to a Commissioner are these, *viz.* That he is of Kindred, or allied to the Party for whom he is named, or that he is Master, Landlord, Tenant, &c. to such Party; that he hath a Suit in Law with the adverse Party to him for whom he is  
named

named and appointed; that the Party for whom named is indebted to the Commissioner; or for that he is of Counsel, Attorney, or Solicitor, or Follower of the Cause on one Side, &c. for any apparent Cause of Partiality, or siding with either of the Parties: And it is irregular for the Clerk of the Solicitor in the Cause to write as Clerk in the Execution of the Commission; in which Cases, Depositions have been suppressed.  
*2 Chanc. Rep. 393.*

The Plaintiff ordinarily is to have the first taking out and Carriage of the Commission; but if the Defendant's Witnesses live a great Way off the Plaintiff's, as sixty or eighty Miles, or if the Defendant has Witnesses which live beyond the Seas where the Plaintiff has none, it should be otherwise; for in such Case, he shall have a Commission granted him for Examining his own Witnesses only, and have the Carriage thereof: So if when a Cause is at Issue, the Plaintiff will not go on to Commission, the Defendant may have a Commission to examine his own Witnesses, and shall have the Carriage of the second; and if the Plaintiff commit any Abuse in the Execution of the first Commission, the Defendant has the like Privilege. Also where a Commission lost by the Fault of him who had the Carriage of it is renewed, the other Side commonly hath the Carriage of it, &c.

He that has the Carriage of the Commission, or his Commissioners, must give fourteen Days Notice to the other Party, or his Solicitor, of the Time and Place of executing the Commission;

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fion ; (except where a Commission is granted *ex parte*, which requires no Notice of the Execution) this is commonly done by Note under the Hands of two of the Commissioners, directed to the Party mentioned in the Label to that Purpose, and is to be left for him at his usual Place of Abode : And if such Notice be not given of executing the Commission, the Court will suppress the Examinations, and grant the other Side a new Commission. It has been held, that if Notice be given of executing a Commission to examine Witnesses, and at the Day appointed the Commission is opened, but nothing done therein, nor any Adjournment made, the Commission is lost ; unless the other Side agree to take new Notice, &c. But if the Commission be not opened, and he who has the Carriage thereof gives new Notice, and then executes it, this is a sufficient Execution ; but it is understood where the other Party hath not obtained and served an Order to stay Proceedings till the Costs of the former Day are paid. When an Adjournment is made of a Commission, it is usual to make a *Memorandum* of Entry thereof, which the Commissioners are to sign ; and being adjourn'd to another Day and Place, and Witnesses examined, the Time and Place where such Examinations are taken ought to be mentioned and set down in the Title of the Depositions ; because in an Indictment of Perjury founded thereon, the Place must be mentioned. *Ord. Canc.*

If by Default of the Party that takes out the Commission, nothing is done thereon, he shall bear



bear the Charges the other Side is put to about it, either for Fees of Court, bringing or retaining Commissioners, or Witnesses, &c. to be ascertained by the Oath of the Party delay'd, or he that disburses the Money for him; and shall renew the Commission at his own Costs. And where due Notice is given, if the one Party produces and examines all his Witnesses, and the other doth not, but prays a new Commission; if it be granted, the Party praying it shall bear all the Charges of such Commission, both in Town and Country, and as well for the other's Commissioners as his own; and the other Side shall be permitted to cross examine the Witnesses produced by him that renews the Commission; but if the other Party will examine any Witnesses of his own at such Commission, then he is to bear his own Part of the Charge. A Commission becoming void by the Error of the Clerk that makes it, the Costs shall be born by him and that Side for whom it is taken out. *Ord. Canc.* 132.

In Case the Commissioners on both Sides attend the Execution of the Commission, and one Side examines, but the other neither examines nor puts in Interrogatories, he shall never do it afterwards without order of Court, on good Cause shewn: And so it is where the Defendant joins in Commission, &c. and his Commissioners do not attend; but upon *Affidavit* made of some reasonable Cause of Non-attendance, and that the Party who did not examine, nor any for him, or by his Direction or Knowledge, hath seen, heard, or been informed of the Depositions taken, nor will see any of them till Publication,  
&c.



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&c. the Court will grant him a new Commission to examine: Also the Court will do the same upon an Examination before the Examiner; and order Publication to be stayed some Time. The Party at whose Instance a Commission is renewed, after a former Commission executed and returned; and he by whose Default a former Commission was not executed, whereupon it is renewed; shall, at his Peril, examine all his Witnesses on that new Commission, or examine them in Court by the End of the Term it is returnable, without any more or further Delay. 1 *Chan. Cas.* 274. *Ord. Canc.* 133.

One Commissioner only of each Side met to execute a Commission, and the Plaintiff's Commissioner went away without doing any Thing; upon this the Court ordered the Plaintiff to pay to the Defendant his Costs and Charges, and that the Defendant should have a new Commission. And a joint Commission having issued to examine both Parts, directed to four, three, or two Commissioners, three of them met and examined Witnesses, and appointed a new Day to examine more; but the Defendant's Commissioners took up the Commission, carry'd it away, and came not at the Day appointed: The Plaintiff's Commissioners came and examined Witnesses without having the Commission, and certified those Depositions with the former, and the whole Matter; and the Court ordered that the Depositions certified should be sealed up and remain here, and awarded a *Subpœna Duces tecum* against the Commissioners

missioners to bring in the Commission, and thereupon the Court would make further Order, &c. *Cary's Rep.* 43, 44.

Formerly *Subpæna's* were frequently granted for Witnesses to appear and testify before the Commissioners; but the Practice now is, for the Commissioners to call the Witnesses before them by Summons issued under two or more of their Hands: Tho' no Attachment lies against the Witnesses for not appearing upon the Summons of the Commissioners, unless a Writ was directed to them under the Great Seal, &c. But if a Witness refuse to appear, or to be examined before the Commissioners, the Court on Motion will grant a *Subpæna* for him to be examined in Court at his own Costs: And when the Witnesses are duly served, &c. and are able, but do not appear, a new Commission may be had upon Oath thereof. A Witness is to have his reasonable Charges paid him, for Loss of Time, Pains and Expences, 'till which be done he may refuse to be examined, or to appear.

By the antient Orders of the Court, Commissions to examine Witnesses were not to be granted but for Age, Impotence, or very remote Distance of Place: But now beyond ten Miles of *London* these Commissions may be executed, and not otherwise, without Order of Court. For it is ordained, that no Commissions for Examination of Witnesses shall be had and executed in or near *London* only, or within ten Miles thereof, but by special Order, to be obtained upon Affidavit of the Party's Inability

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bility to travel, or other good Cause shewn; and all Depositions taken otherwise, shall be superseded and suppressed *ipso facto*, and not allowed to be read at the Hearing; and the Parties who caused the same to be executed, are to be punished for their Contempt. *Ord. Canc.* 133.

There are general, and special Commissions to examine Witnesses; and for the examining Witnesses beyond Sea; also to amend Errors in Depositions, &c. with Orders of Court therein, &c.

A general *Commission to examine Witnesses upon Interrogatories.*

**G**Eorgius, &c. A. B. C. D. E. F. & G. H. *Salutem. Sciatis quod nos, de fidelitatibus & providis Circumspectionibus vestris plurimum confidentes, assignamus vos ac tenore presentium damus vobis tribus vel duobus vestrum plenam potestatem & Auctoritatem Testes quoscunque de & super quibusdam Interrogatoriis tam ex parte J. K. Quer. quam ex parte L. M. Def. seu earundum partium alterius, vobis tribus vel duobus vestrum administrand. sive deliberand. diligenter examinand. Et ideo vobis tribus vel duobus vestrum Mandamus, quod ad certos Dies & Loca quæ ad hoc provideritis præfat. Testes coram vobis tribus vel duobus vestrum venire faciatis & evocetis, ac ipsos Testes & eorum quemlibet per se separatim de & super Interrogat. prædict. super Sacramenta sua tact. per ipsos prius coram vobis tribus vel duobus vestrum Sacrosanctis Dei Evangeliiis corporaliter præstand.*



## Depositions of Witnesses. 491

*stand. diligenter Examinetis, Examinationesque suas super eisdem recipiatis, & in scriptis in pergameno redigatis. Et cum ill. sic ceperitis eas nobis in Cancellariam nostram prædict. a Die, &c. (tali Retorn.) ubicunque tunc fuerit sub sigillis vestris trium vel duorum vestrum distinctè & aperte mittatis unacum Interrogat. prædict. & hoc Breve. Teste, &c.*

And by a *late Order* made in the 8th Year of K. Geo. 1. it is ordered, that where any Commission issues for Examination of Witnesses, all and every the *Commissioners* named in such Commission, shall, before they act in, or be present at the Swearing and Examining any Witness or Witnesses upon Interrogatories in such Causes, severally take an Oath for the faithful Discharge of their Duty in examining the said Witnesses; and not to publish, disclose, or make known the Contents of the Depositions taken, &c. which Oath is to be annexed in a *Schedule* to the *Commission*: And all and every the *Clerks* attending the Execution of any Commission, shall before they act as Clerks, or be present at the Execution thereof, severally take an Oath, truly and faithfully to take, write down, transcribe and ingross the Depositions of the Witnesses examined, and not to publish or disclose the Contents of them, &c. which said Oath is likewise to be annexed in the *Schedule* to the Commission. And also in all Commissions which shall issue to examine Witnesses, the following Clause is to be added and made Part of the Commission, next before the *Teste, viz.* —

K k

Et

Et ulterius vob. & cuilibet vrum Precipim. quod quilibet vestrum priusquam ipse procederit ad Ministrand. aliquem Testem vob. producend. vel tali Examinationi interfuerit prestabit Sacrm. in quadam Scheda presentib. annexat. primo specificat; Et damus tribus duobus vel uni vrum plenam pot'em & auctoritatem conjunctim vel divisim Sacrm. illud sup. Sacrosanct. Dei Evangel. Corporal. ceteris vel alicui al. vrum ministrand. Et ulterius Precipim. quod Persona vel Persona inserviens ut Clericus aut inservientes ut Clerici ad capiend. scribend. vel transcribend. Depositiones Testium producend. & examinand. virtute presentium priusquam inservire ut Clerici ut praefertur aut alicui Examinationi alicujus tal. testis interesse permittetur seu permittentur prestabit aut prestabunt Sacrm. in Scheda praedict. secundo specificat. Et Damus vob. & cuilibet vrum plenam pot'em & auctoritatem conjunctim vel divis. Sacram. illud super Sacrosanct. Dei Evangel. Corporal. tali Clerico seu talib. Clericis ministrand. Teste, &c.

And if any Commissioner, or Clerk attending the Commissioners, act contrary to the Premises, such Commissioner or Clerk, upon Proof of the Offence, shall undergo such Punishment as the Court shall think fit to order and adjudge.

The Forms of these Oaths administered by the Commissioners to each other, and to the Clerks, vide postea.

A Commission to examine Witnesses by Consent of Parties.

**G**Eorgius, &c. A. B. C. D. E. F. & G. H. *Salutem.* Cum quadam Materia Litis & Differentiæ coram nobis in Canc. nostra inter J. K. Quer. & L. M. Def. nuper Ort. & Mota & adhuc indecisa & indeterminata pendet, Sciatis quod nos de fidelitatibus & providis circumspeditionibus vestris plurimum confiden. Assignavimus vos, ac tenore præsentium in complement. cujusdam Ordinis geren. dat', &c. Damus vobis tribus vel duobus vestrum plenam Potestatem & Authoritatem, ex pleno libero & unanimi consensu & assensu partium præd. & cujuslibet earum, Testes quoscunque de & super quibusdam Interrogat. per partes prædict. producend. tam ex parte præd. Quer' quam ex parte præd. Def. vobis tribus vel duobus vestrum ministrand. seu deliberand. diligent. examinand. Et ideo, &c.

Where a Commission is issued to examine the Defendant and Witnesses touching an Account before a Master, it is of the following Form:

A Special Commission to examine Witnesses touching an Account.

**G**Eorgius, &c. M. T. Ar. un. Magistr. Cur. Canc. nostr. *Salutem.* Sciatis quod nos, &c. confidentes Assignavim. Te ac in Complement. quorund. Ordin. coram nobis in dict. Cur. Cgnc. nostr. inter J. K. Quer. & L. M. Def. nu-  
K k 2 per



per fact. & reddit. quor. un. dat. gerit, &c. alter dat, &c. Damus tibi plen. Potest. & Authorit. dict. Def. & Testes quoscunque tangen. Comput. in ord. præd. mentionat. vel aliquam al. Rem. comput. præd. tangen. de & super quibusdam Interrogat. sive aptis Questionibus tibi per partes prædict. seu earum aliquam ministrand. tam ex parte præd. Quer. quam ex parte dict. Def. seu earum partium alterius diligenter Examinand. Et ideo tibi Mandamus quod ad certos dies & Loca quos ad hoc provideris Def. & Testes præd. coram te venire fac. & evoces ac ipsos & eorum quemlibet per se separatim de & super Interrogat. præd. tangen. Computum præd. vel aliquam aliam Rem ut præmittitur super Sacramenta sua tact. per ipsos prius coram te Sacrosanctis Dei Evang. corporaliter præstand. diligenter Examines Examinationesq; suas super eisdem recipias, Nosq; de toto facto & progressu tuo in præmiss. per Relationem tuam in scriptis reddas certiores faciens in præmissis juxta tenorem & veram intention. Ordin. præd. Teste, &c.

If the Commission be for examining Witnesses to an Account, after Hearing, it is thus:

Sciatis quod, &c. confiden. assignav. vos, &c. Et Damus, &c. Potest. & Authorit. in complement. cujusdam Ordinis in Cur. Canc. nostr. Inter, &c. super Auditu Mater. Litis int. præd. fact. geren. Dat, &c. Testes quoscunq; tam ex parte præfat. Quer. quam ex parte præd. Def. seu earum partium alterius de & super quibusdam Interrog. vobis, &c. ministrand. seu deliberand.  
ad

*ad proband. vel illustrand. materiam Computi inter partes præd. per Ordin. præd. fiend. diligent. Examinand, &c. Et ideo, &c. Et cum ill. feceritis eas nobis in Canc. nostr. prædict. Die, &c. facien. & proceden. in omnibus & singulis præmiss. secund. direction. veramq; intentionem ordinis prædict. cujus Tenorem vobis Mittimus per Latorem præsentium, &c.*

A Commission may be had to examine Witnesses beyond the Seas, and if they are Foreigners, to examine them upon their Oaths, and also the Oaths of skilful *Interpreters*; and in such Case, when it is apprehended the Returning thereof by a Commissioner, or by some Person that can make Affidavit of the true Keeping of it, will be too much Delay, the Court has sometimes ordered that a Commission be delivered to a Master to send by the Post, and that he receive the same back by the Post, when executed: If it be returned otherwise, one of the Commissioners must deliver the Commission executed personally to the Person that brings it into *England*; so as when he comes over hither he may make the usual Oath, that he received it from the Hands of one of the Commissioners, and that the same hath not been opened or altered.

*Form of a Commission to examine Witnesses living beyond Sea.*

**G**Eorgius, &c. Sciatis, &c. Assignavimus vos, ac tenore præsentium damus vobis tri-  
K k 3
bus

bus vel duobus vestrum plenam Potestatem & Authoritatem Testes quoscunq; de & super quibusdam Interrogat', &c. ministrand. seu deliberand. diligent. Examinand. Ac etiam pro meliori Examinatione Testium prædict. Damus vobis tribus vel duobus vestrum ulteriorem Potestat. & Authoritat. Sacrament. administrand. alicui Interpretatori sive aliquibus Interpretatoribus fidel. & Linguis perit. per Sacrosanct. Dei Evangelia Corporalit. præstand. Interrogatoria præd. & Testium Depositiones bene & fidelit. Interpretari si necesse fuerit. Et ideo vobis tribus vel duobus vestrum Mandam. quod ad Dom', &c. in Civit. de, &c. in France, in partibus transmarinis, ad certos Dies, &c. Mensis stilo veteri prox. futur. conven. & assembletis ac de Die in Diem in Executione præmissor. sedeatis, & Testes prædict. coram vobis tribus vel duobus vestrum venir. fac. & evocetis, ac ipsos Testes & eor. quemlibet per se separatim de & super Interrog. præd. super Sacramenta sua tact. per ipsos prius coram vobis tribus vel duobus vestrum Sacrosanct. Dei Evangel. corporal. præstand. diligent. Examinetis, ac omni Executione præmissor. diligent. intendatis Examinationesq; suas super eisdem recipiatis & in scriptis in Pergameno redigatis, Et cum illas sic ceperitis eas nobis in Canc. nostram prædict. in Anglia sine dilatione ubicunq; tunc fuerit sub sigillis vestris trium vel duorum vestrum claus. distincte & aperte mittatis una cum hoc Breve. Teste, &c.



A special Commission to correct and amend Errors in Depositions.

**G**Eorgius, &c. Cum variæ Lites & Controversiæ nup. mot. & ort. sunt ac in Canc. nostra adhuc pendent indeterminat. inter A. B. Quer. & C. D. Def. Cumque nos pro Examin. Testium inter partes prædict. vobis tribus vel duobus vestrum Commissionem nostram nuper direximus, ad cuius Execution. Examinat. E. F. super Interrogat. ei ex parte Quer. exhibit', &c. ac quædam Depositiones dict. E. F. Ingrossantur & Certificantur per Error. & negligenc. Clericor. ad Ingross. Depositiones prædict. apud Executionem Com. præd. appunctuat. sicut per Certificat. de, &c. duor. Commiss. præd. nob. plen. liquet & apparet; Sciatis igitur quod nos de Fidelitatib. & magis providis circumspectionibus vestris plurim. confiden. Assignavimus vos ac tenore præsentium Damus vobis tribus vel duobus vestrum Potestatem & Authoritat. Depositiones per vestrum in Cur. nostr. antehac Retorn. ac jam in præsentibus interclus. & vobis retornat. diligent. comparand. ac perficiend. ac omnes Errores in eadem Commiss. corrigend. & emendand. juxta vetera Original. vobiscum seu aliquo vestrum jam remanen. Et ideo vobis tribus vel duobus vestrum Mandamus quod ad certos Diem & Loc. quos ad hoc provideritis, Execuc. hujus nostri Com. diligent. intendetis, ac Depositiones si vobis miss. circumspecte provide & sollicite comparet. corrigatis & perficiatis cum originalibus prædict. Et cum sic feceritis tunc nobis in

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*Curia Canc. nostr. sine dilation. ubicunq; fuerit de toto facto, &c. sub sigillis vestris trium vel duorum vestrum claus. distincte & aperte mittatis & hoc Breve. Teste, &c.*

*An Order of Court for the Defendant to be examined as a Witness.*

*Luna 5 Die Novembris Anno Regni Regis, &c.  
Inter A. B. Quer. C. D. & E. F. Def.*

**U**PON Motion this Day made unto this Court by Mr. *T.* being of the Plaintiff's Counsel, it was alledged, that the Defendant *E. F.* is no Ways concerned in Point of Interest, and will be a material Witness for the said Plaintiff in this Cause; it was therefore pray'd, that the Plaintiff may be at Liberty to examine the said *E. F.* as a Witness for him *de bene esse*; which is ordered accordingly, saving to the other Side all just Exceptions.

*An Order for a Defendant to join in Commission with the Plaintiff, or in Default the Plaintiff to have a Commission ex parte.*

**O**N opening of the Matter this present Day unto this Court by Mr. *L.* of Counsel for the Plaintiff, it was alledged that the Plaintiff exhibited his Bill into this Court in, &c. Term, but the Defendant by Sitting in Contempt, and having put in a frivolous Plea, &c. hath very much delay'd the Plaintiff in this Cause by his late Answer, and the Plaintiff having several  
aged

aged and infirm Witnesses to examine, and replied to the Defendant's Answer, so that the Cause is at Issue, and this Vacation being a proper Time for examining of Witnesses; it was therefore pray'd, that the Defendant might forthwith rejoin and join in Commission, or the Plaintiff have a Commission *ex parte*: Whereupon it is ordered, That the said Defendant do, in four Days after Notice to his Clerk in Court, rejoin and join in Commission, and strike Commissioners Names; or in Default thereof, the Plaintiff is at Liberty to take out a Commission for Examination of his own Witnesses *ex parte*.

Order *that the* Defendant *do take out a New Commission to examine Witnesses, to be executed by New Commissioners.*

**U**PON the Defendant's humble Petition this Day preferred to the Right Honourable the Master of the Rolls, and for the Reasons therein contained, it is ordered, That the Defendant be at Liberty to take out a new Commission for Examination of Witnesses, returnable the second Return of the next Term, and to execute the same on *ten Days Notice*; and that G. J. Gent. do stand Commissioner for the Defendant in the Room of T. E. Esq; who refuses to act therein; whereof the Plaintiff's Clerk in Court or Agent is forthwith to have personal Notice.

*Note*; By this *Order* it appears, that this Court on Cause shewn, will dispence with their own



own general Rules and Orders; as for Instance, the fourteen Days Notice of executing the Commission to examine is here restrain'd to ten Days.

*An Order for adding new Interrogatories to any new Witnesses before Publication.*

Whereas some Questions did arise in this Cause touching the Course of the Court, whether any new Interrogatories might be exhibited to new Witnesses in Court, after a joint Commission executed in the Cause; and the Right Honourable, the Master of the Rolls, having heard what the Six Clerks and the Examiners could say concerning the same; and the Six Clerks affirming, That by the Course of the Court, *no new Interrogatories may be exhibited in Court after a joint Commission executed in the Country*; and the Examiners of the Court averring, That it hath always been the constant Course of the Court, that new Interrogatories may be exhibited in Court for the Examination of any new Witnesses, as often as the Client hath Occasion, 'till Publication, what Commissions soever there have been in the Cause, and that the Right Honourable the Lord Chancellor had so declared himself; the Master of the Rolls did this Day declare, That he had perused the Orders of this Court, and doth not find any Thing therein to restrain the Exhibiting of new Interrogatories into Court, at any Time before Publication, for the Examining of new Witnesses, and that he having had Conference with the Lord Chancellor for his Opinion therein,

his

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his Lordship was clear of Opinion, *That new Interrogatories may be exhibited* into Court for the Examination of new Witnesses at any Time before Publication pass'd, altho' there have been joint Commissions formerly executed in the Cause: Therefore this Court doth now affirm the same to be the Course of the Court herein, and order that the Order of Reference to Mr. L. for suppressing of Depositions so taken in this Cause be discharged, and a *Vacat* entered thereupon.

Order to renew a Commission; and to restrain the Plaintiff from committing Waste, &c.

**W**Hereas by an Order of, &c. last, for that the Defendant's Commissioners joined in examining the Plaintiff's Witnesses upon a joint Commission, and the Defendant examining no Witnesses of his own, nor exhibiting any Interrogatories at that Commission, but afterwards exhibited Interrogatories in Court and examined his Witnesses thereupon, which, as was alledged, was contrary to the Course and Practice of the Court; it was therefore ordered, That the Six Clerks, not towards the Cause, should consider of the Matter, and certify therein, as they should find it appear; who thereupon certified, that they conceived the Defendant's Witnesses were unduly examined, and ought to be suppress'd, but left the Plaintiff at Liberty to examine three Witnesses in an Affidavit named upon his former Interrogatories: Upon opening of the Matter this Day by Mr. M. being of the De-

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Defendant's Counsel, and upon Reading of the Six Clerk's Certificate, and on shewing an Affidavit made by the said Defendant, whereby it appeareth that there hath been no Discovery by the Defendant's said Commissioners of any the Proceedings on the former Commission, but that the Plaintiff would have proceeded to Hearing, and debarred the Defendant from Examining any Witnesses on any further Commission; which his Lordship declaring to be a meer Surprizal of the said Defendant; it is thereupon ordered by this Court, That the Plaintiff be at Liberty to renew his Commission for the Examination of his said three Witnesses in his Affidavit named, according to the Certificate of the said Six Clerks; but that the Defendant's Depositions already taken shall stand, or the Defendant be at Liberty to examine *de novo* at the Election of the Plaintiff, to be forthwith made, that the Defendant may not be surpris'd in the Examination of his Witnesses: And the Plaintiff is ordered and enjoined, not to fell any Timber-Trees growing upon any of the Lands of the said, &c. nor to suffer any Waste in the Houses thereunto belonging, until this Cause shall receive a Hearing in this Court.

*As to the Execution of Commissions to examine Witnesses, it is thus:*

**W**HEN the Commissioners have received the Commission, they must give their Notice to the other Side, of the Time and Place of Executing it, in the following Form, *viz.*  
Notice



*Notice of Executing a Commission.*

**W**Hereas we have received a Commission  
issuing out of his Majesty's High Court  
of Chancery, to us, and, &c. directed, for the  
Examination of Witnesses in a Cause there de-  
pending, between *A. B.* Plaintiff and *C. D.* De-  
fendant: These are to give you Notice, that we  
will execute the said Commission on the Behalf  
of the Plaintiff, at the House of, &c. known by  
the Sign of, &c. situate in, &c. in the County  
of *S.* on Monday being the, &c. Day of, &c.  
next coming, at the Hour of ten a-clock in the  
Forenoon of the same Day, when, and where  
you and your Commissioners and Witnesses con-  
cerned may be present if you please. Given un-  
der our Hands, this . . . Day of, &c.

To Mr. *C. D.*

*E. F.*

*G. J.*

This Notice is to be given and delivered to  
the Party, fourteen Days before the Time of  
Executing the Commission, as has been before  
observed, (except a shorter Time be appointed  
by Order of Court) or the Examinations shall  
be suppressed. And the Witnesses are served with  
a Summons to appear before the Commissioners,  
at the Time and Place, to depose their Know-  
ledge to each Interrogatory; which Summons is  
in this Form:

*A Sum-*

*A Summons for Witnesses to appear.*In Canc.    Inter *A. B. Pl. C. D. Def.*

**W**Hereas we have received a Commission  
issuing out of his Majesty's High Court  
of Chancery, &c. (*ut supra*). And whereas we  
are inform'd, That you, whose Names are here  
under written, are material Witnesses for the  
Plaintiff (or Defendant) in this Cause: These are  
therefore, by Virtue of the said Commission, to  
will and require you, and every of you, perso-  
nally to be and appear before us, or any three  
or two of the said Commissioners, at the House  
of, &c. known, &c. in, &c. on the Day of, &c.  
next, then and there to be examined, and to  
testify your Knowledge for and on Behalf of the  
Complainant; and you are then and there to at-  
tend, and not depart until you have been exa-  
mined on the Part of the said Complainant:  
And herein you are not to fail. Given under  
our Hands, &c.

To *N. M. P. R. S. T.**W. E. &c.**E. F.**G. J.**L. M.*

The Commissioners and Witnesses being met,  
at the Time and Place appointed, according to  
the Notice, the Commission (which 'till that  
Time remain'd sealed) must be opened, that the  
Commissioners may see their Authority; and  
then they are to administer the *Oath* to each o-  
ther,

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ther, and also the Oath to the Clerks to the Commission, for faithful Discharge of their Duty, and Secrecy, &c. required by the *late Order* of Court.

*Oath of Commissioners to examine Witnesses.*

‘ **Y**OU shall, according to the best of your  
‘ Skill and Knowledge, truly, faithfully,  
‘ and without Partiality, to any or either of the  
‘ Parties in this Cause, take the Examinations  
‘ and Depositions of all and every the Witnesses,  
‘ produced and examined by Virtue of the  
‘ Commission hereunto annexed, upon the In-  
‘ terrogatories now produc’d and left with you;  
‘ and you shall not publish, disclose, or make  
‘ known, to any Person or Persons whatsoever,  
‘ except to the Clerk or Clerks by you employ’d,  
‘ and sworn to Secrecy in the Execution of this  
‘ Commission, the Contents of all or any of the  
‘ Depositions of the Witnesses, or any of them,  
‘ to be taken by you and the other Commissio-  
‘ ners in the said Commission named, or any of  
‘ them, by Virtue of the said Commission, until  
‘ Publication shall pass by Rule and Order of  
‘ the High Court of Chancery.

*So help you God.*

*The Oath of the Commissioners Clerks.*

‘ **Y**OU shall truly and faithfully, and with-  
‘ out Partiality to any or either of the  
‘ Parties in this Cause, take and write down,  
‘ transcribe and ingross the Depositions of all  
‘ and



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‘ and every Witness and Witnesses, produc’d be-  
 ‘ fore and examined by the Commissioners, or  
 ‘ any of them, named in this Commission, as far  
 ‘ as you are directed and employed by the said  
 ‘ Commissioners, to take, write down, or in-  
 ‘ gross the said Depositions, or any of them; and  
 ‘ you shall not publish, disclose, or make known,  
 ‘ to any Person or Persons whatsoever, the  
 ‘ Contents of all or any of the Depositions of  
 ‘ the Witnesses, or any of them, to be taken,  
 ‘ wrote down, transcribed, or ingrossed by you,  
 ‘ or whereto you shall have Recourse, or be any  
 ‘ ways privy, until Publication shall pass by  
 ‘ Rule or Order of the High Court of Chancery.

*So help you God.*

After these Oaths are administred, the Commissioners and their Clerks begin to execute the Commission; and having before them the *Interrogatories*, the Clerks draw up the Stile of the *Depositions* in Paper: The Forms of the Interrogatories are as follow:

Pro Quer’. *Interrogatories to be admini-  
 stred to Witnesses to be produc’d  
 on the Part and Behalf of A. B.  
 Complainant, against C. D. De-  
 fendant.*

1. *Imprimis*, Do you know the Parties Complainant and Defendant, how long have you known them, &c.?

2. *Item*, Whether do you know the Messuage or Tenement situate, &c. what is the same worth,

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worth, or let for by the Year, &c. as you know or believe; declare?

3. *Item*, Were you present, and did you see, &c.

And the Style of the *Depositions*, preparatory to the Examination of the Witnesses on the Interrogatories exhibited is generally thus:

Ex parte Quer'.

**Depositions** of Witnesses taken at, &c. in the County of S. at the House of, &c. on the Day, &c. by Virtue of a Commission issuing out of his Majesty's High Court of Chancery, to us directed for the Examination of Witnesses in a Cause there depending between A. B. Complainant, and C. D. Defendant, on the Behalf of the Plaintiff.

Then the Commissioners call a Witness before them, and cause all Persons but themselves and their Clerks, and the Witness to be examined, to depart the Room, and then they give the Witness his Oath.

Oath to be administred to Witnesses.

‘ **BY** Virtue of a Commission to us directed  
‘ out of the High Court of Chancery for  
‘ Examination of Witnesses in a Cause there  
‘ depend-

' depending, wherein *A. B.* is Plaintiff and *C. D.*  
 ' Defendant, you are to be produc'd and sworn  
 ' as a Witness on the Complainant's Part: You  
 ' are therefore true Answer to make to all such  
 ' Interrogatories as shall be administred unto  
 ' you, on the Behalf of the said Complainant;  
 ' and therein shall speak the Truth, the whole  
 ' Truth, and nothing but the Truth,

*So help you God.*

The Oath given, the Witness's Name and  
 Place of Abode, Addition and Age, are to be  
 writ in the same Paper, under the *Title* of the  
*Depositions*, &c. And the Commissioners must  
 themselves examine the Witnesses on the Inter-  
 rogatories, and not leave it to their Clerks;  
 wherein they are to examine but to one Inter-  
 rogatory at a Time, and shall not read to the  
 Witnesses another Interrogatory 'till they have  
 gone through and answered the former: The  
 Commissioners shall likewise take down what  
 comes from the Witnesses on their Examination,  
 and not permit them on their own Reading of  
 the Interrogatories to set it down themselves;  
 but after they have been examined, they may  
 suffer them, upon better Consideration, to amend  
 their Examination; which will not be suffer'd on  
 an Examination in Court. A Witness may be  
 allowed to use short Notes he brings with him  
 to help his Memory; though not the Substance  
 of the Depositions, nor may he transcribe *verba-*  
*tim* such Notes. And the Commissioners ought  
 not to ask any idle Questions, or such as are fo-  
 reign to the Interrogatories; nor set down im-



pertinent Answers, but only what are material on the Points interrogated. The Names and Additions of the Witnesses, &c. and their *Depositions* or *Answers*, are thus put down:

*N. M. of the Parish of, &c. Gent. aged about, &c. Years, being sworn and examined, deposeth as followeth.*

1. To the first Interrogatory, this Deponent saith, that he knows the Complainant *A. B.* and hath so known him, &c.

2. To the second Interrogatory, this Deponent saith, that he well knows the Messuage or Tenement, &c.

3. To the third Interrogatory, this Deponent saith, &c.

*P. R. of, &c. Yeoman, aged, &c. Years and upwards, sworn and examined, deposeth as follows.*

1. To the first Interrogatory, this Deponent saith, &c.

2. To the second Interrogatory, &c.

*S. T. of, &c. aged, &c. sworn and examined, deposeth, &c.*

All the Witnesses being examined, let each Witness set his Name to each Deposition; and then the Depositions are to be ingross'd in Parchment, in like Manner as the Interrogatories, and examined with the Paper Draughts; after which

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the Commissioners sign each Schedule of the Examinations on Parchment, and also the Interrogatories, and then bind them up together with the Commission, (called, Making up the Commission,) with some red Tape, or other String, setting all their Seals upon the same; but before the Commission is sealed up, they are to indorse upon it the Execution, to which they likewise subscribe their Names.

*Executio istius Com' patet in quibusdam  
Schedulis huic Com' annex'.*

E. F.  
G. H.  
L. M.

When the Commission is executed and made up, the Paper Draught is to be also sealed up as above, and delivered to one of the Commissioners to keep; and the Commissioners must deliver the Commission, the Label thereof hanging out at the End, personally to the Person that brings it to Town, who is to deliver it to a Master in Chancery, and make Affidavit before him as follows.

*Oath on Delivery of the Commission executed.*

‘ **T** R. of, &c. maketh Oath, that on the  
‘ **T** . Day of, &c. last, he receiv'd the Com-  
‘ mission now deliver'd, from the Hands of, &c.  
‘ one of the Commissioners therein named, and  
‘ that the same hath not been open'd or altered  
‘ since he received it.

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If the Commission is carried by one of the Commissioners, no Affidavit is required; you need only indorse,

*Per manus un' Commissioner', &c.*

The Commissioners have as Fees a Guinea a Day each, and their Clerks for drawing, &c. 10 s. *per* Day, and all Charges of eating, drinking and Entertainment born; and the Person that carries the Commission is usually allowed 2 s. 6 d. for his Trouble.

On Delivery of the Commission, the Examinations are not to be open'd or copied, until Publication; nor shall the Commissioners discover the Depositions, &c. or after the Examination is begun confer with either of the Parties, to take new Instructions. If the Commissioners cannot agree, or meet with any Obstructions in Executing the Commission, that or what else is necessary to inform the Court of, must be certified by the Commissioners in the Return of the Commission: And in such Cases, where the Execution of the Commission is prevented, the Court will sometimes send an Examiner down into the Country. Also the Court hath ordered Commissioners touching Partiality and ill Practice; but if there be a Misdemeanor, the Party wrong'd must make Affidavit thereof, &c.

If there be any Writings directed by the Commission to be proved, the Commissioners are to give Directions to bring them in for that Purpose; and after they are proved, *Exhibits* may be made of them.



*An Exhibit of Proving a Deed before Commissioners, indors'd thereon.*

10 Sept. 1728.

**A**T the Execution of a Commission issuing out of his Majesty's High Court of Chancery, for Examination of Witnesses in a Cause there depending between *A. B.* Plaintiff, and *C. D.* Defendant, this Deed or Parchment Writing was produc'd and shewn to, &c. and by him depos'd unto at the Time of his Examination to the third Interrogatory on the Complainant's Part, and was also produc'd and shewn unto, &c. and by him depos'd, &c. before us

*E. F.*

*G. J.*

*Of Examining Witnesses by Examiners in Court.*

**A**LL Witnesses are examined either by Commissioners in the Country, as before is shewn; or by the *Examiners* in their Office, which is called *Examining in Court*.

The *Examiners* in Chancery, by themselves, or Deputies, examine upon Oath or Interrogatories filed, the Witnesses on both Sides that are brought before them in any Cause, as also Parties in Contempt; and do put in Writing and file the Depositions taken thereon, which Depositions they are to keep close and private till Publication. The Witnesses or Parties to be examined, must be first sworn before a Master in Chancery

Chancery, to answer truly to the Interrogatories; and their Names who are sworn must be inserted in the Interrogatories by the Master, and then they are to be examined. And the Examiners are to employ under them none but Persons of Ability and Integrity; who shall take an Oath, *Not to deliver or make known directly or indirectly to the adverse Party, or any other, save the Deponent who comes to be examined, any of the Interrogatories deliver'd in to be examined upon, or any of the Examinations taken or remaining in the Examiners Office, or any Copy or Extract thereof, before Publication be thereof passed, &c.*

And if any Examiner's Deputy, Clerk, or other Person employ'd, be found faulty in the Premises, he shall be expuls'd the Office, and the Examiner who so employ'd him, be answerable to the Court for his Misdemeanor, and also to the Party grieved for his Costs and Damages sustain'd thereby; and such Solicitor or other Person who shall be discover'd to have had a Hand therein, shall be liable to such Censure as the Court shall find just Cause to inflict upon him. This is injoin'd by the Orders of the Court; pursuant to which an Examiner's Clerk hath been suspended for intrusting one who was no sworn Clerk in the Office to transcribe Part of the Depositions of a Witness, before the Witness had perfected his Examination, or Publication was pass'd in the Cause. *Ord. Chanc. 129, 215.*

The Court hath likewise order'd, that the Examiners are in Person to be diligent in the Examination of Witnesses, and not intrust the same

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to inferior Clerks; and shall take Care to hold the Witnesses to the Point interrogated, and not run into Matters not pertinent to the Question, thereby wasting Paper for their own Profit, of which the Court expects a strict Account: And if the Examiner uses any needless Circumstances to lengthen the Depositions, or any idle Repetitions, or sets down any Answer to the Question, which the Examinant cannot depose to, other than thus, *To which Interrogatory this Deponent cannot depose, &c.* on observing such Impertinencies, the Examiner is to recompence the Charge thereof as the Court shall award. Also Examiners are to examine the Deponent to the Interrogatories *seriatim*; and not permit the Witness to read over, or hear read any other Interrogatory 'till that in Hand be fully finish'd; that so by this Means the Truth may not be eluded, which it might more easily be, if a Witness knew every Question that would be asked of him before he answered any: And they shall not suffer the Deponent to depart after he hath heard an Interrogatory read to him, 'till he hath perfected his Examination thereunto. *Ord. Canc.* 128, 130.

No Witness shall be examined in Court without the Privy of the adverse Party, or his Clerk in Court, to whom the Person to be examined shall be shewn, and Notice of his Name and Place of Dwelling deliver'd in Writing by those that shall produce him to the said Clerk in Court; and the Examiner is to be well satisfied that such Notice be given, and shall then add to the Title of such Witnesses Examinations the Time of such Notice given, and the Name of the Persons by



by and to whom it is given, that at the Hearing of the Cause, the Suitor may not be delayed on Pretence of Want of Notice. If any Witness shall refuse to conform himself, the Examiner is thereof to give Notice to the Clerk on the other Side; and to proceed no further in his Examination without Order for so doing, or the Consent of the said Clerk. *Ord. Canc.* 126, 128.

Where any Party shall ground a Motion or Petition on an *Affidavit* of his having material Witnesses to examine, whereby to gain longer Time, such *Affidavit* is to contain not only the Names of the Chiefest of such Witnesses, but also the Points on which they are desired to be examined; to the End the Court may see whether the such Points be material to be examined unto. *Ord. Canc.* 207. The Court, upon special Reasons shewn, will order a Witness to be examined by the Examiner after Publication; and after Hearing, Witnesses have been order'd to be re-examined, to clear up the Matter. After Publication, on good Cause shewn either upon Oath, or the Certificate of the Commissioners, Leave will be given to examine by a Time prefixed; provided the Party shall not in the mean Time see, &c. any of the former Examinations; and *Affidavit* is to be made in these Cases by the Party desiring to examine; *That neither he, or any Person for him, or by his Privy, hath read, seen or been inform'd of any Depositions already taken; and that 'till the Witnesses he desires be examined, he will not read, see, or be inform'd of the same, &c.* *Ord. ibid.*

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No Copies of Examinations are to be read or made Use of in Court, &c. but what are taken out of the proper Office, and signed for the Party for whom the same shall be read: Though sometimes if one of the Parties has not brought his Copy into Court at the Hearing, &c. the other Party will lend him his Copy, and the Court will allow it to be read. The Examiners and their Deputies have Liberty to attend in Court to inspect all Books of Depositions, which are read for the Plaintiff or Defendant, and see whether they be duly sign'd; and if the Examiner shall find any Fraud or ill Practice, the Cause shall be put off, and the Parties offending be committed to the Fleet, 'till the Officer injur'd be paid his Fees, and the Client injur'd by putting off the Cause be reimbursed his Charges in Respect thereof, and also 'till 5 *l.* be paid to such Person as the Lord Chancellor shall appoint for the Use of the Poor, &c. And by an antient Order of Court, either Examiner in a Cause may take out a *Sub-pœna* against any he shall suspect to have delivered undue Copies of the Depositions, for the Examining such Persons upon Interrogatories to be allowed of by a Master, before the other Examiners; and if the Matters be certified faulty by the Master, every Person so offending shall be committed to the Fleet 'till he has given the Examiner Satisfaction; but if the Parties acquit themselves upon such Examination, the Examiner shall pay Costs, &c. *Ord. Canc.* 76. 4.

As Depositions taken upon a Commission, are immediately, upon bringing in of the Commission,  
to

to be delivered to the proper Six Clerk or his Deputy, to be safely kept; so those taken by the Examiners, are to be safely and privately kept by them until Publication: And if they be not in both Cases thus kept and entered as of Record by the proper Officer, they will be void and not be permitted to be used. *Ibid.* 156.

*Of Examining in perpetuam rei Memoriam.*

Sometimes Witnesses are examined *in perpetuam rei Memoriam*, to preserve their Testimony in Case of Death, &c. and their Examinations may be taken in Court or by Commission.

And herein a Bill is to be first exhibited, setting forth the Plaintiff's Title to the Thing in Question, and that the Witnesses to prove the same are old and infirm, or sick, and not like to live long, or that they are going beyond Sea, &c. whereby the Party is in Danger of losing their Testimony, and therefore you pray a Commission to examine them, and a *Subpoena* to the Parties interested, to shew Cause, if they can, to the contrary: And after the Bill is filed, the Court, on Affidavit made that the said Witnesses are old, infirm, going beyond Sea, &c. if they live in the Country, will grant a Commission according to the Prayer of the Bill; or if they are within 10 Miles of *London*, will order them to be examined in Court *de bene esse*.

The Proceeding upon this Bill are mostly the same as on others: And there are several Orders of the Court thereto relating, as that the Commissioners



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missioners shall examine no Witnesses but such as are aged or impotent ; that the Complainant shall give 14 Days Warning or Notice to the Party that should take Prejudice by this Examination, of the Time and Place of executing the Commission, &c. of which Oath is to be made ; and if the adverse Party can shew before the Commissioners good Cause of Exception against the Witnesses produced, or the Commissioners themselves, then the Commissioners are to cease any further Execution of the Commission, and certify and rerurn the said Causes of Exception ; but if the Party adversant cannot shew Cause against it, the Commissioners shall proceed, and such Party may join in the Examination of the Witnesses upon Interrogatories on his Behalf, if he think good. If the Defendant doth not shew Cause against such a Commission, nor join therein, the Plaintiff may have it *ex parte*, and go on alone. *Ord. Sir Nic. Bacon.*

The foregoing Orders are to be observed where the Commission is *ex parte Querentis* only ; and they were formerly engross'd in Parchment, and annexed to the Commissions. And these further Rules were also made by the *Lord Keeper Sir Nicholas Bacon*, touching the Publication, &c. of Depositions taken in these Cases ; that the Party who prayeth Publication, shall first by himself, or some other, make Oath, that the Depositions of the same Witnesses are necessary to be given in Evidence on his Behalf ; and likewise that the Witnesses are dead, or so aged or impotent, as they cannot travel to testify *vi-vâ voce*, without Danger of Life ; whereupon a  
Master

Master of the Chancery is to open the Commission; and he being satisfied the Orders of Court have been observed, Publication is granted, &c. provided that after Examination and Publication had, the adverse Party shall not be admitted to any new Examination.

Since the aforesaid Orders, the Course has been, that if the Party interested, within 14 Days of the Service of the *Subpœna*, shew such Cause to the contrary as is allowed by the Court, the Plaintiff is to desist; if not, he may proceed to examine alone: Or the Defendant may come in by Appearance and join in Commission, and then Notice is to be given of executing the Commission. No Depositions taken *in perpetuam rei Memoriam*, shall be made Use of or given in Evidence against any other Persons, but such Defendant or Defendants who were summoned to defend the Bill; or some claiming under him or them by some Interest accruing after the same was preferred. And ordinarily these Depositions are not to be published, but upon Oath that the Witnesses are dead.

Bills to examine in perpetual Testimony, were utterly disliked, by the Lord *Chancellor Egerton*, because the Depositions thereupon are not generally to be published whilst the Witnesses live; and being Dead, there is no Remedy against them, if they have committed Perjury: And he ordered the Party to exhibit his Bill on the Title, and so proceed to an Examination and Publication in the ordinary Course; saying, *They might go to Law if they would, and take the Benefit of those Examinations.* But in some Cases,

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Cases, as by Consent of Parties, or on Oath that the Plaintiff has some Trial at Law wherein he shall need them, and that the Witnesses are not able to travel, &c. the Court will sometimes order Publication in the Life of the Witnesses; and the Party may exemplify the Depositions in such Case, which may be given in Evidence in any other Court by Order of this Court.

If a Matter is properly triable at Law, as a Title, &c. and the Plaintiff can have an Opportunity of trying it, this Bill is not to be brought here till the Party has affirm'd his Title at Law. A Bill set forth, that the Defendant's Ancestor settled the Estate in Question on the Plaintiff in Tail; that the Deed was lost or in the Defendant's Hands, and pray'd that the Plaintiff might examine Witnesses *in perpetuam rei Memoriam*: The Defendant answered the whole Bill, denying the Estate or Deed; but as to the examining Witnesses to perpetuate Testimony or Proceeding any further, the Defendant demurred, for that the Plaintiff might try his pretended Title at Law, and so affirm it and the Deed by which he claimed; and because he had not so done, the Demurrer was allowed. *Chanc. Rep. 263.*

When Lands are devised by Will, and there is no Occasion or Opportunity to prove and establish it at Law, it is often thought necessary to perpetuate the Testimony thereof in this Court. Yet 'tis said, tho' the Court suffers Examinations to perpetuate Testimonies of a Will, it cannot barely try the Validity of a Will; but if the same come collaterally in Question upon a  
Bill



Bill for the Performance of a Trust, or touching a Devise out of Lands, &c. the Court of Chancery will sometimes direct an Issue at Law to try the Validity thereof.

The Way to examine Witnesses *in perpetuam rei Memoriam* to prove a Will, is to exhibit a Bill against the Heir at Law, and thereby set forth the Will *in hæc verba*: The Defendant having answered, you proceed to Issue as in other Cases; and then examine the Witnesses to the Will, or prove their Hands if they be dead. The Will must be brought into the Examiner's Office to be examined unto; which being done, and Publication past, the Cause is at an End.

A Commission to examine in perpetual Memory runs: *Ad examinand. testes super Interrogatoribus administrand.* adding at the End of these Words, *in perpetuam rei memoriam, &c.*

*A Bill in Chancery to examine Witnesses in perpetuam rei Memoriam.*

**H**Umblly complaining sheweth, &c. your O-  
rator *A. B.* that *W. B.* late of, &c. was  
in his Life-time seised in his Demesne as of Fee-  
simple of and in all that Messuage or Tenement,  
&c. situate, &c. and being so seised as aforesaid,  
did on or about &c. in the Year, &c. make and  
publish his last Will and Testament in Writing,  
and amongst several other Devises and Bequests,  
he the said *W. B.* did devise and bequeath the  
aforesaid Messuage and Lands to your said Ora-  
tor *A. B.* and also, &c. and he did thereby re-  
voke

voke all former Wills by him the said *W. B.* made, &c. And your Orator farther sheweth, that the said *W. B.* having signed, sealed, published and declared his said Last Will and Testament in the Presence of three credible Witnesses, and the said Witnesses having subscribed and attested the said Last Will and Testament in the Presence of him the said *W. B.* did deliver his said Last Will to, &c. to be preserv'd and kept, and shortly after, that is to say, on or about, &c. the said *W. B.* died, leaving behind him your Orator, &c. and your Orator did well hope there could be no Pretence of Cavil about the said Last Will and Testament of the said *W. B.* and that your Orator should quietly hold and enjoy the Estate of him the said *W. B.* according to the true Intent and Meaning of his Last Will and Testament: *But now* so it is, &c. that *L. B.* of, &c. Son of the said *W. B.* doth pretend Title to the Estate of your Orator, and doth give out in Speeches that the said *W. B.* his Father had no Power to devise the said Estate by his Will, and at other Times, that if he had Power he made no Will nor any Devise thereof; and in case he made any Will, that he was not *compos mentis*, or of sound and disposing Memory at the making thereof: *In tender* Consideration whereof, and forasmuch as your Orator's Witnesses, that can prove the said Last Will and Testament of the said *W. B.* are aged and infirm, and not likely to live long, &c. and to the Intent he may examine them in this Court for Preservation of their Testimony for Proof of the said Will; and that the same Will, by which  
the

the said Lands, &c. are devised, may be produced by your Orator in this Honourable Court, and the Evidence, Depositions and Testimony thereof and touching the same, may be here preserved for the making out your Orator's Title to the said Lands and Premises; and to the End your Orator's Tenants in Possession of the said Lands and Premises may by this Court be quieted and established, and that your Orator may be relieved in all and singular the Premises, &c.

*May it please your Lordship*, the Premises considered, to grant unto your Orator his Majesty's Commission under the Seal of this Honourable Court, directed to *C. D. E. F. &c.* or to such Persons as your Lordship shall think fit, inhabiting in the said County of, &c. for the examining of your Orator's Witnesses *in perpetuum rei Memoriam* for the Proof of the Matters aforesaid; and also his Majesty's most gracious Writ of *Subpœna* directed to the said *L. B.* thereby commanding him at a certain Day therein limited, personally to be and appear before your Lordship in this High and Honourable Court of Chancery, to make Answer, &c.

*And your Orator shall ever pray, &c.*



*Of Examination of Witnesses de bene esse.*

**A** Bill in Chancery being filed, the Court on *Affidavit*, that any of the Complainant's Witnesses are aged and infirm, sick, or going beyond the Seas, that the Plaintiff thinks he is in Danger of losing their Evidence, will order them before Answer to be examined *de bene esse*, viz. so as to be valid, if the Complainant has not an Opportunity of examining them after Answer; as where they die before Answer, or do not return, &c. in either of which Cases, the Depositions taken may be made Use of in this Court, or at Law, like as Depositions which are taken in perpetual Memory. But Depositions taken *de bene esse* are to be of no Force, if the Parties are alive and well, or do return after Answer, &c. for in such Case they must be re-examined, if the Plaintiff expects any Benefit from them.

The Examinations of Witnesses after Appearance, and before Answer, are only *de bene esse*; and if any of the Witnesses die before the Defendant has answered, their Depositions shall be used, otherwise not. And the Rules for Examination of Witnesses *de bene esse* are of the same Nature with those for examining *in perpetuam rei Memoriam*.

**Interrogatories** administred to Witnesses in various Cases.

*To Prove a Will.*

**Pro Quer'.** *Interrogatories to be administred to Witnesses to be produced on the Part and Behalf of A. B. Complainant, against C. D. and others, Defendants.*

1. **I***mprimis*, Do you know the Parties, Complainant and Defendants, or any or either and which of them? How long have you known them, or any or either of them? Did you know *T. D.* deceased, late Husband of the said *C. D.* in his Life-time? How long did you know him before his Death, and about what Time did he die? *Declare.*

2. *Item*, Whether did you know of any Will that the said *T. D.* in his Life-time made? How long was the same made before his Death? Is the Paper Writing now produced and shewn to you, such Will as he then made? Doth such Will contain the Words following, (that is to say) *In the Name of God, Amen, I T. D. of, &c. do this Day, &c.* (here set forth the Will *verbatim*). Have you carefully compared and examined such Will with the Words in this Interrogatory? And doth the same exactly agree with the Words of the Interrogatory, as near as you can possibly examine and compare the same together? Were you well acquainted with his

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Hand-writing? Did he read the same, or was the same read over to him before he signed, sealed, and published the said Will? Did you see him sign, seal, and publish the same as and for his Last Will and Testament, in your Presence? Who was then there present besides your self? Where was the same so done? Was the said *T. D.* at that Time of good sound Mind, Memory and Understanding, as you know or believe? Did you afterwards subscribe your Name as a Witness thereto in the Presence of the said *T. D.* or in the same Room wherein he then was? Who else was present besides your self, and also Witnesses thereto? Did they also set their Names as Witnesses thereto, in the Testator's Presence, or in the Room wherein he then was? Is your Name set thereto as a Witness of your own Hand-writing, and are the Names or Marks of the other Persons set thereto of their Hand-writing? How long did the said *T. D.* live after the Sealing and Publishing his said Will? *Declare what you know, believe, or have heard to this Interrogatory, with the Reasons and Circumstances at large.*

3. *Item*, Whether was you a Witness to the Last Will and Testament of the said *T. D.*? Is the Paper-writing now produced and shewn to you a true Copy of that Will he so made, and whereto you were Witness? Have you carefully compared and examined the same with the said Will, and doth such Copy agree therewith? *Declare.*

To



To prove a *Conveyance of Lands*, and the Value thereof.

Pro Quer'. Interrogatories to be administered to Witnesses to be produc'd on the Part of, &c.

1. **I***mprimis*, Do you know the Parties Complainant and Defendant, or either and which of them? How long have you known them, or either of them?

2. *Item*, Whether did you see the Indenture now produc'd and shewn to you, bearing Date, &c. and made between, &c. sealed and delivered by the said, &c. as his Act and Deed; and did you indorse your Name as a Witness to the Sealing and Delivery thereof? And is your Name there written of your own proper Hand-writing? Who else were Witnesses besides your self, as you know or believe? *Declare*.

3. *Item*, Whether were you present, and did you see the said, &c. sign the Receipt indorsed on the Backside of the said Indenture in the last Interrogatory mentioned, purporting a Receipt for the Sum of, &c. as the Consideration-money mentioned in the said Indenture? And did you subscribe your Name as a Witness to the said Receipt, and is your Name there subscribed of your own Hand-writing? *Declare*.

4. *Item*, Whether do you know the Messuage or Tenement in the said Indenture mentioned to be situate in, &c. in the Possession of, &c. what is the said Messuage or Tenement worth by the Year?

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Year? Or how much is the same now let for by the Year, as you know or believe? Is that the true and real yearly Value thereof? How long hath the same been let at that Rate, as you know or believe? *Declare, &c.*

To prove *Debts on Bond, Notes, Payment of Money, &c.*

Pro Def'. Interrogatories to be administered to Witnesses to be produced on the Part and Behalf of C. D. Defendant, at the Suit of A. B. Complainant.

1. **I***mprimis*, Do you know the Parties Complainant and Defendant, &c.? *Declare.*
2. *Item*, Whether do you know of any Money owing by T. D. Father of the said C. D. at the Time of his Death, that hath been paid by the Defendant C. D. to the Complainant since the Death of the said T. D. If yes, set forth the same, and the Sums of Money so paid, and to whom, and for what. Whether was such Money so paid, secured by Bond, Bill, Note, or otherwise? Were you a Witness to such Bond, Bill, or Note, whereby such Debt became secured, due or payable, by or from the said T. D.? Whether did you receive the same, or see the same paid, or were you present thereat, and did you see the Acquittance or Acquittances given for Receipt thereof, signed by the Persons receiving the same? And did you subscribe your Name as a Witness to such Acquittance or Acquittances?

quittances? *Declare what you know or believe herein, with your Reasons.*

3. *Item*, Whether do you know of any Money owing by the said *T. D.* and yet unpaid? Or any Goods sold and delivered to him in his Life-time, and to what Value? Or any Money laid out for the Funeral of the said *T. D.* If yea, set forth the particular Sum and Sums so owing, and to whom, and for what? Whether was there any, and what Security given therefore, as you know or believe? Were you a Witness to the Lending thereof, or did you see such Securities given therefore, signed, sealed and executed by the said *T. D.* for Payment thereof, or how else do you know the same? *Declare.*

4. *Item*, Whether did you see any or either, and which of the Bonds, Notes, Papers and Writings, now produced and shewn to you, signed and sealed by the said *T. D.* And did you subscribe or indorse your Name as a Witness thereto? Are you acquainted with the Hand-writing of the said *T. D.* or with the Hand-writing of either of the Persons whose Names are subscribed as Witnesses thereto? Are they or either of them dead, as you know or believe? *Declare.*

5. *Item*, Do you know of any Sum or Sums of Money paid by the Complainant *A. B.* or by any other by his Appointment, to, &c. or to any other Person or Persons to his Use? What Sums did he, they, or any of them pay? When was the same paid, and to whom? *Declare.*

6. *Item*, Have you been acquainted with the Hand-writing of the said, &c. Do you believe



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the Receipts or Acquittances now shewed unto you, to be his proper Hand-writing, or whose Writing do you believe the same to be? Were you a Witness to them, or any and which of them? And is your Name subscribed or indorsed as a Witness, of your own Hand-writing? Have you been acquainted with the Hand-writing of any of the Witnesses to the said Receipts or Acquittances, or any, and which of them? Do you verily believe the Names of the said, &c. and the Witness or Witnesses to the said Receipts, or any, and which of them, to be their own proper Hand-writing? *Declare, &c.*

To prove a *Deed of Release, Mortgage, &c.* and *Assignments* thereof, with the *Consideration* of the Deeds, and whether not entered into upon an usurious Contract.

*Interrogatories to be administred on Behalf of the Complainant to G. J. of, &c. Gent.*

1. **I***mprimis*, Did you see the Deed or Writing now produc'd and shewn to you, bearing Date, &c. and made between *W. F.* of, &c. of the one Part, and *W. G.* and *J. G.* of, &c. of the other Part; purporting a Release or Conveyance from the said *W. F.* to the said *W. G.* and *J. G.* of a Moiety of the Mills and Wears of, &c. signed and sealed by the said *W. F.* Did you subscribe or indorse your Name as a Witness thereto, and is your Name thereto as a Witness of your own Hand-writing? Did you see the Acquittance indorsed on the Back of the said Deed

*Depositions of Witnesses.* 531

Deed for the Consideration-money signed by the said *W. F.* and did you subscribe your Name as a Witness to such Acquittance? *Declare.*

2. *Item,* Did you see the Deed or Writing now produced and shewn to you bearing Date, &c. and made between, &c. purporting a Mortgage from *W. F.* to the said *W. G.* and *J. G.* of a Moiety of the said Mills and Wears of, &c. signed and sealed by the said *W. G.*? Did you subscribe or indorse your Name as a Witness thereto, and is your Name thereto as a Witness of your own Hand-writing? Did you see the Acquittance thereon indorsed for the Consideration-money, signed by the said *W. F.* and did you subscribe your Name as a Witness to the same? *Declare.*

3. *Item,* Did you see the Articles of Copartnership now produced and shewn to you, bearing Date, &c. made between the said *W. F.* the said *W. G.* and *J. G.* relating to a joint Trade to be carried on in the aforesaid Mills, signed and sealed by them the said *W. F. W. G.* and *J. G.* or any and which of them? Did you subscribe or indorse your Name as a Witness thereto, and is your Name thereto as a Witness of your own Hand-writing? *Declare, &c.*

4. *Item,* Do you know or believe, that the said several Deeds, or any and which of them, were drawn by the Directions of all or which of the said Parties? Was there any and what Person employed to draw the same, and were there any, and what Instructions given by any Person or Persons, and whom, to draw the said Deeds, or any and which of them? Was the said *W. F.*  
or

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or either of the other Parties uneasy at what was done, or was there any Kind of Menace used to force the said *F.* into the Execution thereof? Did the said *W. F.* see and peruse, or approve of the Draughts of the said Deeds, or did he take any and what Exception thereto? And did he read the said Deeds or any and which of them after they were ingrossed, and how and in what Manner was he prevailed upon to execute the same? Did the said *W. F.* object against any, and what Article, Matter or Thing, mentioned or contained in the said Draughts, or any and which of them, or was he well pleased therewith, and how did he express himself concerning the same? Did he make any Objection against the Payment of 10*l.* *per Cent. per Ann.* in the said Deed of Mortgage mentioned, or to all or any, and which of the Covenants and Clauses in the said Articles? What was the Reason of inserting the said Allowance after the Rate of 10*l.* *per Cent. per Ann.* and was the said *W. F.* consenting thereto; and if not, how, and after what Manner did he express himself concerning the said Allowance, what was the Ground or Occasion thereof, and at whose Instance was the same inserted? Was there any, and what Money lent on the said Mortgage to oblige the said *W. F.* or otherwise, and did the said *F.* agree that the Money to be paid into the Trade and Copartnership should be paid as he drew Bills for the same, or not? Do you know of any Offer by *W.* or *J. G.* to pay in any and what Sum of Money to the said *W. F.* Did the said *F.* accept  
or



or refuse the same? Did you see all or how much of the Consideration-money of the Conveyance paid, and was it paid in Money or Notes? Did you draw, or give Directions for Drawing a Receipt from the said *W.* and *J. G.* to the said *W. F.* for any, and what Sum as Part thereof, and how was the same to be applied, and was there any and what Agreement to that Purpose, and between whom was such Agreement, and at whose Request entered into? *Declare, &c.*

5. *Item*, Did you see the Deed or Writing now produc'd and shewn to you, bearing Date, &c. and made between, &c. purporting a Release or Conveyance from the said *J. G.* to the said *W. G.* of all his Right and Title to a Moiety of, &c. Mills, signed and sealed by the said *J. G.*? Did you subscribe or indorse your Name as a Witness thereto, and is your Name thereto as a Witness of your own Hand-writing? Did you see the Acquittance indorsed on the Back of the said Deed for the Consideration-money, signed by the said *J. G.* and did you subscribe your Name as a Witness to the said Acquittance? *Declare.*

6. *Item*, Did you see the Deed or Writing now produc'd and shewn to you, bearing Date, &c. containing a Release from the said *J. G.* to the said *W. G.* of all his Right and Interest in a Moiety of the said, &c. Mills, granted to the said *W. G.* and *J. G.* in Mortgage by the aforesaid *W. F.* signed and sealed by the said *J. G.*? Did you subscribe or indorse your Name as a Witness thereto, and is your Name as a  
Witness

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Witness thereto of your own Hand-writing? *Declare.*

7. *Item*, Did you see the Deed or Writing now produced and shewn to you, purporting an Assignment from the said *J. G.* to *W. G.* of all his Interest in a Moiety of the joint Trade and Copartnership carried on in the said Mills, signed and sealed by the said *J. G.* and did you subscribe and indorse your Name as a Witness thereto? *Declare.*

8. *Item*, Did you draw the last mentioned Deeds, or any and which of them? At whose Request, and by whose Directions did you draw the same, and from whom did you receive your Instructions? Did the said *J. G.* voluntarily execute the same, and was he well satisfied therewith, or otherwise? *Declare, &c.*

To prove a *Title to divers Manors and Lands.*

*Interrogatories to be administered to Witnesses to be produced, &c.*

1. *I* *Imprimis*, Do you know the Plaintiffs and Defendants in this Cause, any and which of them? And did you know *L. D.* late of, &c. deceased, and *E.* Wife of the Defendant *T. B.* and Sister of the said *L. D.* also deceased, or either and which of them, in their or either of their Life-times? *Declare.*

2. *Item*, Do you know the Manor of, &c. in the County of, &c. and the Manors and Lordships of, &c. or any and which of them? And was *M. D.* deceased, Father of the said *L. D.* at  
any

any Time and when, in his Life-time, Owner or reputed Owner of the same, or any and which of them? And do you know what Person or Persons were Owner or Owners of the said Manors and Premises, or any and which of the same, and when was it, before such Time as the said *M. D.* was Owner thereof? Did the said *M. D.* or the said *L. D.* and which, or either of them, purchase the same, or any and which of them? Did the said *M. D.* marry with any and what Woman, who was Inheretrix of the said Manors and Premises, or any and what Part or Parts of the same? *Declare your Knowledge thereof, and the Reason of such your Knowledge.*

3. *Item,* Was the Deed or Writing, Deeds or Writings, now shewed unto you, sealed and delivered, and by whom? Were you a Witness to the Sealing and Delivery thereof? And is your Name subscribed and indorsed as a Witness thereto of your own Hand-writing? And have you been acquainted with the Hand-writing of the Party or Parties, or Witnesses to the said Deed or Writing, Deeds or Writings, or any and which of them? And do you verily believe the Names of the said Party or Parties, and Witnesses to the same Deed or Deeds, Writing or Writings, or any and which of them, to be their own proper Hand-writing? *Declare, &c.*

4. *Item,* Do you know that *E. D.* Sister of the said *L. D.* deceased, was the Wife of the Defendant *T. B.* And do you know the Time of the Intermarriage between them the said *E.* and the Defendant *T. B.* and was the said *E.* only Sister of the said *L. D.*? *Declare.*

5. *Item,*



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5. *Item*, Do you know or have credibly heard, that the said *L. D.* did at any Time in his Life-time, and when, become engaged with *M. D.* the Complainant's Father, as his Surety for any and what Sum or Sums of Money, or other and what Things, and to whom? And have you heard the said *L. D.* declare, or not, that he had suffered much by Reason of the said Engagement from the Complainant? And if so, did not the said *L. D.* seem to be there-upon much displeased, so that he protested he would have nothing more to do with the Complainant, or Words to that Effect? *Declare what you have heard the said L. D. say or speak therein.*

6. *Item*, Did the said *L. D.* at any Time or Times, and when, in his Life-time, use any and what Words touching the Complainant's not being to have the said *L. D.*'s Estate after his Decease? And did the said *L. D.* at any Time or Times in his Life, and when, use any Words or Speeches relating to the Complainant or *M. D.* the Complainant's Father, and either and which of them, whereby it did appear he was displeas'd with them, or either and which of them, and in whose Presence did he use Words or Speeches to that Effect? *Declare, &c.*

7. *Item*, Did the said *L. D.* at any Time, and when, during his Sicknes whereof he died, or at any other Time or Times, and when, in his Life-time, declare or use any, and what Words and Speeches, whereby it did appear that his Mind was, that his said Estate should or might descend to the Defendant *T. B.* or to that

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that Effect? Have you heard the said *L. D.* use any Expressions of Love and Affection towards the said Defendant *T. B.* what Words of Love and Affection did he use towards him? Where did he use such Words, when and in whose Presence, and upon what Occasion did he use them? *Declare the Truth.*

8. *Item,* Did the Complainant, or any other Person or Persons for him, as you believe, and who by Name, at any Time or Times, and when, where, and in whose Presence, promise or propose unto you, or to any other Person or Persons, any and what Offer and Gratitude, to the Intent that you, or such other Person or Persons, should for such Reward or Gratitude, set on Foot some pretended Deed or Deeds, thereby to entitle the Complainant, or otherwise to prejudice the Defendant *T. B.*'s Title to the Estate of the said *L. D.* deceased? Or by which the same might seem to be entailed or settled upon the Complainant, to his Use? *Declare, &c.*

9. *Item,* Do you know *A. D.* of, &c. and did the said *A. D.* at any Time or Times, and when, in the Life-time of the said *L. D.* by Letter, or otherwise, request you, or any other Person or Persons, and who by Name, to use Means to perswade or prevail upon the said *L. D.* to settle his Estate? Did the said *A. D.* then, or at any other Time or Times, say and declare unto you, that the said *L. D.* had made any Will or Settlement of his Estate, and when, and in whose Presence, did he so say or declare, and upon what Occasion? *Declare.*

10. *Item,*

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10. *Item*, Did you know one *W.H.* was he Servant to the said *L.D.* in his Life-time, and when, and for how long Time did he serve the said *L.D.* and did you at any Time and Times, and when, since the Decease of the said *L.D.* hear the said *W.H.* say or declare, that the said *L.D.* had not made any Last Will or Testament, or other Settlement touching his Estate, or Words to such Effect? When and in whose Presence did he so say and declare, and where and upon what Occasion? *Declare, &c.*

11. *Item*, Did the Complainant at any Time or Times, and when, by Letter or Word of Mouth, send unto you, or any other, and what other Person, to your Knowledge, or inquire of you, or such other, to be inform'd, whether the said *L.D.* deceased had given or settled any Estate to or upon him the said Complainant? And what were the Contents of such Letter, Message, or Inquiry, as you know or have heard? *Declare the Truth of your Knowledge herein.*

*To discover and prove a Settlement, and Mortgages, Leases of Tenants within a Manor, &c.*

1. *I**mprimis*, Do you know the Parties Complainant and Defendants, &c. did you know *F.E.* late of, &c. deceased, and how long is it since the said *F.E.* died? *Declare, &c.*

2. *Item*, Did you know the Messuage or Tenement and Lands in Question in this Suit, called, &c. lying in the County of, &c. in which  
2 formerly



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formerly the said *F. E.* lived; and who hath held the same, and receiv'd the Rents, Issues and Profits thereof, ever since the Death of the said *F. E.* which was in the Year, &c. or for any, and how many Years of the said Time?

*Declare what you can say to this Interrogatory on your own Knowledge, or as you have credibly heard and believe.*

3. *Item*, Do you know, or have credibly heard and believe, that the said *F. E.* made any Settlement, and when, of the said Messuage or Tenement and Lands, or any Part thereof, upon *W. E.* his Kinsman of, &c. and the Heirs Males of his Body? and whether was such Settlement of his the said *F. E.*'s Estate made upon Consideration of Money paid, or was the same voluntary, or without any Consideration of Money paid, only for natural Love and Affection? *Declare what you can say, &c.*

4. *Item*, Do you know, or believe, that the said *F. E.* mortgag'd the Messuage called, &c. to *E. K.* Esq; for securing the Payment of, &c. and the Interest thereof? have you seen the said Deed of Mortgage made by the said *F. E.* to the said *E. K.* or any Counterpart or Copy thereof; and what Date beareth the said Deed of Mortgage? how and at what Time was the said Sum of, &c. to be paid back for the Redemption of the said mortgaged Premises; and were the said mortgaged Premises redeemed from the said *E. K.* in his Life-time, and when and by whom, and what Money was paid for the Redemption thereof, and by whom? Was the Inheritance of the said mortgaged

N n

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gaged Premisses worth one thousand Pounds to be sold, or what other Sum do you verily believe they then were or now are worth; and are the same sufficient, and more than sufficient to satisfy the Money justly due upon the said *E. K.*'s Mortgage, in Case the same be not paid? *Declare the Truth according to your Knowledge.*

5. *Item*, When, and about what Time, and how long after the Death of the said *F. E.* did the said *E. K.* or any on his Behalf, and who, enter upon the said Messuage and Lands, and receive and take the Rents and Profits thereof; and for how many Years hath the said *E. K.* and his Assigns, been in Possession of the said mortgaged Premisses, and received the Rents, Issues, and Profits thereof, and what and how much may the same amount unto? Do you know of any Means and Endeavours used, and what, by, &c. to have enter'd and got Possession of the said Tenement and Lands, or have credibly heard of any Suit brought, &c. for obtaining the Possession thereof, and what was the Impediment that they obtain'd not the same? Was it that Mr. *K.* had a prior Mortgage of the same from the said *F. E.* or what was the Impediment thereof? *Declare, &c.*

6. *Item*, Do you know the Manor of, &c. and the demesne Lands thereunto belonging, of what yearly Value, or reputed yearly Value, are the same? Who hath held and possessed the same ever since the Death of the said *F. E.* and what Rent do you know to have been paid for the same by the Year, and to whom and for whose Use and Benefit hath the same been paid since

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since the Death of the said *F.E.*? *Declare the Truth, &c.*

7. *Item*, What Tenants within the said Manor have taken any Leases of their Tenements, which were the Inheritance of the said *F.E.* since his Death; from whom did they take the same, and what Fine or Fines did they pay, and to whom paid they their said Fines, and to whose Use? *Declare, &c.*

8. *Item*, Do you know, or have you credibly heard, or believe, that *T. M. G. H. F. L. &c.* or any and which of them particularly, or any other, did take any Lease or Leases of several Tenements and Lands, within the Manor of, &c. *aforesaid*? From whom did they or either of them take the said Lease or Leases, and what and how much Fine, or Fines, did they and every of them pay for the same? To whom, and for whose Use was the same paid; and what is the yearly Rent reserved upon each of the said Leases, to whom is the said Rent now paid, and for how long hath it been so paid? *Declare, &c.*

9. *Item*, What Tenements or Lands do you hold of the said Manor of, &c. and how long have you held the same? Have you taken any new Lease of your said Tenements or Lands, since the Death of the said *F.E.* and from whom did you take the same, what Person or Persons did seal and execute to you your said Lease, and what Fine paid you for the same, and to whom? What Rent have you paid yearly, and to whom, and for whose Use have you paid your said Rent, since the said *F.E.*'s Death;



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how long did you pay your said Rent to, &c. or to the Defendant *A. F.* or to or for them, and either and which of them? And what Term do you claim to have in the said Tenement and Lands, which you hold within the said Manor? *Express the same particularly, and declare the Truth, &c.*

10. *Item,* How many Children did the said *F. E.* leave at the Time of his Decease, and whether were they then provided for, or were they Infants very young and undispos'd of? Were the Children of the said *F. E.* at his Decease, left to be provided for, brought up and dispos'd of in the World, out of and by the Benefit of the Leases of, &c. *Declare, &c.*

*To prove a Person Heir, and the Possession of Lands, Grants and Surrenders of Copyhold Estates.*

1. **I** *Mprimis,* Do you know the Plaintiffs and Defendants in this Cause, or any and which of them? And did you know, &c. *Declare.*

2. *Item,* Do you know when *A. B.* of, &c. and *M.* his Wife did depart this Life? And is the Complainant *S. B.* the sole Daughter and Heir of the said *A. B.* And what Age was she of at the Decease of the said *A. B.* her Father? *Declare, &c.*

3. *Item,* What is the true yearly Value of the Messuage and Lands which were held by the said *A. B.* in the Manor and Parish of *W.* and for how long Time hath the Defendant *C. D.*

or

or any for him held and enjoy'd the same? And what yearly Rent was reserved to the Lord of the said Manor, to be paid for the said Mesuage and Lands? *Declare.*

4. *Item,* Do you know the Manor or Lordship of, &c. and do you know that any and what Lands and Tenements, Parcel of and lying within the said Manor, have been demised or demiseable by Copy of Court-Roll, according to the Custom of the Manor (that is to say) for three Lives, &c. as by Copy of Court-Roll thereof, or by Surrender, the same should be granted or limited? *Declare, &c.*

5. *Item,* Do you know that *G. H. F. L.* and *T. M.* and any and which of them were in their Life-times, and when seised, according to the said Custom of certain Tenements and Lands thereunto belonging, Parcel of the said Manor, lying, &c. And did the said *T. M.* survive and over-live them the said, &c. and when did the said, &c. depart this Life? And do you know that the said Tenements and Lands whereof the said *T. M.* was seised, are or have been Part of the customary or Copyhold Lands of the same Manor or Lordship? *Declare.*

6. *Item,* Do you know, that about the Month of, &c. in the Year of our Lord, &c. or at any other Time after the Death of the said, &c. and when, the said *T. M.* being so seized thereof, did out of Court surrender, according to the Custom of the said Manor, the said customary Lands and Tenements into the Hands of the then Lord or Lords of the said Manor, by the Hands of *G. B.* and *A. D.* two of the custo-

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mary Tenants of the said Manor, to the Use of, &c. and Remainder to, &c. *Declare, &c.*

7. *Item*, Do you know that the said *G. B.* and *A. D.* or either of them, or any other customary Tenants of the said Manor, and who by Name, did at any Court or Courts holden for the said Manor of, &c. and when, present any Surrender or Surrenders made by the said *T. M.* of the said customary Tenements and Lands, whereby the same were limited to the said, &c. for Life, and after his Decease to the said, &c. *Declare your Knowledge herein with the Reasons thereof.*

*To prove a Rental of an Estate, and Rents received, &c.*

1. **I** *mprimis*, Have you been acquainted with the Hand-writing of *B. D.* deceased, the Defendant's late Father? Do you believe the Writing or Rental now shewed you, to be the proper Hand-writing of the said *B. D.* or whole Hand-writing do you believe the same to be? *Declare, &c.*

2. *Item*, Are the Writings now shewed unto you, or either and which of them, true Rentals of the Plaintiff's Estate, left him by and descended from, &c. or any or what Part or Parts thereof? Were you at any Time or Times, and when, since the Death of the said, &c. and for how long employed, by the said *B. D.* the Defendant's Father in his Life-time, or by whom, in or about the Gathering or Receiving the Rents of the Plaintiff's Estate, or any and what



what Part thereof? Or do you know of any other, and what Person or Persons, who was or were so employed by the said *B. D.*? *Declare.*

3. *Item,* Do you know, or have heard, that the said *B. D.* the Defendant's Father deceased, did receive for the Plaintiff, in his Right, the Rents of any, and what Lands, Tenements and Hereditaments, lying in, &c. and when, and what Rents, and for how long Time did the said *B. D.* receive the same? And were you at any Time, when and how long, employ'd by the said *B. D.* in and about the Receiving of the Rents of any Lands or Tenements whatsoever, lying within the Parishes of, &c. or either of them? *Declare, &c.*

4. *Item,* Do you know the yearly Value of the Quit-rents of the Manors of, &c. in the County of, &c. have you seen a Rental or Rentals thereof? And do you believe the same to be a true Rental, &c.? *Declare.*

5. Do you hold of the Plaintiff, as his Tenant, any and what Lands or Tenements lying within the said Manors, and Parishes of, &c. or either of them? And for how long Time have you so held the same? And what are the yearly Rents thereof? *Declare the Truth, &c.*

6. Did the said *B. D.* or any for him, or by his Direction or Appointment, at any Time or Times in his Life-time, and for how long Time, receive of you, or any other to your Knowledge, and what other, or out of the Plaintiff's Lands, Tenements or Hereditaments, or any of them in, &c. any Rent or Rents of the Plaintiff's Estate? And what, or how much Rent or

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Rents, did you or such other Person pay? *Declare what you can say to this Interrogatory, according to the best of your Knowledge or Belief, with the Reasons of your Knowledge and Belief.*

*To prove a Reference to Arbitrators.*

1. **I***mprimis*, Do you know the Parties Plaintiff and Defendant in this Cause, or either and which of them, &c.? *Declare.*

2. Do you know, have credibly heard, or believe, that any Reference has been propos'd by the Defendant to the Complainant, to refer the Matters in Question in this Suit to two indifferent Persons, to be chosen between them as Arbitrators? When and where was such Proposal made by the Defendant? Was it before or since the Commencement of this Suit, were there any Arbitrators, and who named? Was you one of the Persons named to be an Arbitrator on the Complainant's Side? And who was the Arbitrator on the Defendant's Side? Were there any Bonds of Arbitration drawn, by whom enter'd into, and of what Penalty, and what Time was limited therein for the Arbitrators to make their Award? Did the said Arbitrators make any Award, or not? If not, what was the Obstruction or Impediment that hinder'd them from so doing?

*Declare the Truth upon this Interrogatory fully and at large.*

*A general concluding Interrogatory.*

**D**O you know of any other Matter or Thing, or have you heard of any other Thing touching the Matters in Question that may tend to the Benefit and Advantage of the Complainant in this Cause, besides what you have been before interrogated unto? *Declare the same fully and at large, as if you had been thereunto particularly interrogated.*

To prove a Contempt, in not obeying a Decree, and Subpœna for Costs, &c.

*Interrogatories to be administred to C. D. upon a Contempt by him committed, at the Suit of, &c. Complainant.*

1. **I***Mprimis*, Were you on or about, &c. last, or at any other Time, and when, serv'd with a Writ of Execution of a Decree made in this Cause, under the Seal of this Honourable Court, and with a Report made by R. L. Esq; one of the Masters of this Court, bearing Date, &c. and signed, &c. by which Report the Master did certify, that he had allowed a Conveyance to be seal'd and executed by you, mention'd in the said Decree and referred to him, for the Transferring of the Trust of, &c. or to such or the like Effect? Did the Party that so serv'd you with the said Writ of Execution and Report, shew unto you the said Writ of Execution under Seal as aforesaid, and the said Report sign'd  
as



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as aforesaid, and a Deed or Conveyance signed by the Master, in Testimony of his Allowance thereof? And did he give and deliver unto you, or leave with you, or in your Presence, a Copy of the said Writ of Execution, and of the said Report, or either and which of them; or tender the said Conveyance unto you, and desire or demand of you to sign, seal and deliver the same, and in all other Things to obey and perform the said Writ of Execution? And were you by the said Decree to seal and execute such Conveyance as should be allowed by the said Master? Did you at the same Time, or any other, and when, seal and execute the said Deed of Conveyance? And have you in all other Things obeyed the said Writ of Execution? *Declare, &c.*

2. *Item*, Were you on or about the said Day, &c. or at any other Time, and when, served with a Writ of Execution, or other Writ under the Seal of this Court, in yellow Wax, whereby you were enjoined or commanded on Receipt thereof to pay unto the Plaintiff, or the Bearer of the said Writ, the Sum of, &c.? What else was the Contents of the said Writ? Were you likewise on or about, &c. served with a Writ of *Subpæna* for Costs, under the Seal of this Honourable Court, whereby you were commanded to pay unto the said, &c. or the Bearer thereof, the Sum of, &c.? Did the Party that serv'd you with the said Writ of Execution and *Subpæna*, shew the said Writs to you under Seal as aforesaid, and deliver the same to you, or leave the same with you, or in your Presence? And did he demand of you to obey and perform the said  
several

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several Writs of Execution and *Subpæna*, and to pay the said several and respective Sums of Money before-mentioned accordingly? *Declare.*

3. *Item*, Did you, in Obedience to the several Writs of Execution and *Subpæna* afore-mentioned, then or at any Time since, and when, pay the said several Sums of, &c. or either and which of them, to the Persons that so serv'd you with the said Writs, or to the Parties to whom the same were respectively payable? *Declare the Truth herein, with the Reasons of your Contempt in this Behalf.*

**Depo:**

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**Depositions** of Witnesses upon several of the  
*preceding Interrogatories.*

*On the Interrogatories for Proof of a Will.*

*Ex parte Quer'.* *Depositions* of Witnesses  
had and taken the Day  
and Year, &c. at the House  
of, &c. known by the Sign  
of, &c. situate, &c. in the  
County of, &c. By virtue  
of a Commission issued out  
of his Majesty's High Court  
of Chancery, to us *E. F.*  
and *G. J.* and also, &c. di-  
rected for Examination of  
Witnesses in a Cause there  
depending between *A. B.*  
Complainant, and *C. D.*  
Defendant, on the Part and  
Behalf of the Complainant,  
as followeth (that is to  
say)

*B. T. of, &c. Gent. aged thirty Years and up-  
wards, being sworn and examined, deposeth  
as followeth.*

1. **T**O the first Interrogatory this Deponent  
saith, that he knows the Complainant,  
and also the Defendant, and likewise did know  
*T. D.* deceased in this Interrogatory named, in  
his Life-time, and for many Years before his  
Death,



Death, which happened on or about, &c. in the Year, &c. as this Deponent hath heard and believes.

2. To the second Interrogatory this Deponent saith, that he the said *T. D.* during the Time of his last Sickness whereof he dy'd, desir'd this Deponent to make and draw up his Last Will and Testament in Writing, which accordingly this Deponent did, about a Fortnight or more before his Death, and shewed the same to the said *T. D.* and read it over to him, who ordered some small Alterations to be made, and then this Deponent transcribed the same fair, and left it with the said *T. D.* to peruse, who some Time after acquainted this Deponent that he had perused the same, and was well satisfied therewith; and saith, that the Paper Writing now produced and shewn to this Deponent, at the Time of his Examination, bearing Date, &c. last past, is the same Will of the said *T. D.* which this Deponent so made, and which the said *T. D.* duly executed on the Day of the Date thereof; and this Deponent further saith, that he hath carefully examined and compared the said Will with the Words in this Interrogatory, and the same doth exactly agree with such Words, as near as this Deponent could possibly examine and compare the same together; and further this Deponent saith, that the said *T. D.* did sign and seal and publish the same, as and for his Last Will and Testament, in the Presence of this Deponent, and *R. P.* and *T. M.* the other Witnesses thereto, at the House of him the said *T. D.* situate, &c. on the said Day,  
&c.

&c. last past, and afterwards the said *R. P.* and *T. M.* and this Deponent did subscribe their Hands as Witnesses to the Sealing and Publishing thereof, in his Presence, and in the same Room where he the said *T. D.* then executed the same, and that the Names *R. P. T. M.* and *B. T.* so thereto subscribed, are the proper Hand-Writing and Hand-Writings of the said *R. P. T. M.* and *B. T.* this Deponent, respectively; and this Deponent further saith, that the said *T. D.* at the Time of his Signing, Sealing and Publishing the said Will, was of sound Mind, Memory and Understanding, and well knew what he did when he executed the same, and saith that the Will after it was so published and attested, was delivered to the said *T. D.* to be disposed of as he thought fit, and the same was afterwards delivered by the said *T. D.* as this Deponent hath heard and believes, to *C. D.* his Wife the Defendant in this Cause.

3. To the third Interrogatory this Deponent saith, he was a Witness to the Last Will and Testament of the said *T. D.* and that the Parchment Writing now produced and shewn to him this Deponent, is a true Copy of the Will so made, and whereto this Deponent was a Witness; and saith, that he hath carefully compared and examined the same with the said Will, and that it agrees therewith, as near as this Deponent could possibly examine and compare the same together.

*Depositions on the Interrogatories for proving a Conveyance, and the Value of Lands.*

*A. M. of, &c. aged about 40 Years, being sworn and examined, deposeth as followeth:*

1. **T**O the first Interrogatory this Deponent saith, that he knows the Complainant *A. B.* and hath so known him for ten Years last past, and doth also know the Defendant *C. D.*

2. To the second Interrogatory this Deponent saith, that he did see the Indenture now produced and shewn to him, bearing Date, &c. and made between, &c. sealed and delivered by the said, &c. as his Act and Deed, and thereupon he this Deponent did indorse his Name as a Witness to the Sealing and Delivery thereof by the said, &c. and saith, that the Name *A. M.* so thereon indorsed as a Witness, is the proper Hand-writing of him this Deponent.

3. To the third Interrogatory this Deponent saith, that he was present and did see the said, &c. sign or subscribe his Name to the Receipt indorsed on the said Indenture in the preceding Interrogatory mentioned, or did hear him acknowledge that the Name, &c. subscribed to the said Receipt, was the Hand-writing of him the said, &c. and thereupon this Deponent did subscribe or indorse his Name as a Witness to the said, &c. his so signing or acknowledging thereof; and saith, that the Name *A. M.* thereto subscribed as a Witness, is the proper Hand-writing of him this Deponent.

W. H.



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*W. H. of, &c. aged about, &c. Years, being sworn and examined, deposeth as follows.*

4. To the fourth Interrogatory this Deponent saith, that he well knows the Messuage or Tenement in this Interrogatory mentioned, situate, &c. And that the same in this Deponent's Judgment is worth 30*l. per Annum* to be let, and the same hath been let at that Rent for several Years past, until about, &c. and this Deponent the better knows the same, for that he this Deponent hath been employed by the Defendant *C. D.* as an Agent in receiving the Rents thereof for above seven Years last past.

*Depositions on the Interrogatories for Proof of Debts upon Bond, and Notes, &c.*

*J. K. of, &c. aged, &c. being sworn and examined, deposeth as followeth.*

2. **T**O the second Interrogatory this Deponent saith, that since the Decease of *T. D.* in this Interrogatory named, he heard, &c. own and acknowledge, that he had and received of the Defendant *C. D.* as the said *T. D.*'s Executor, the Principal Money and Interest due on a certain Bond entered into by the said *T. D.* and others to him the said, &c. and which Money was unpaid at the Time of the Death of the said *T. D.* and this Deponent believes, that the Bond now produced and shewn to him this Deponent, at the Time of his Examination,  
bearing

bearing Date, &c. purporting to be an Obligation from the said *T. D.* to the said, &c. of 100*l.* Penalty, for Payment of 50*l.* and Interest in and upon, &c. then next ensuing, is the same Bond which the said *T. D.* so paid off to the said, &c. because this Deponent had the said Bond some Time in his Custody, and it is for the same Sum as the said, &c. declared he had received.

*M. L. of, &c. aged, &c. being sworn and examined, deposeth as follows.*

3. To the third Interrogatory this Deponent saith, that *T. D.* in this Interrogatory named, was justly indebted unto this Deponent's late Husband *B. L.* deceased, in the Sum of, &c. for Goods sold and delivered, as by the Note delivered by this Deponent's said late Husband unto the said *T. D.* in his Life-time, and by the Deponent's said Husband's Day-Book or Journal, which agreed with the said Note, appears to her this Deponent; and this Deponent further saith, that the said Money was never paid to this Deponent's Husband in his Life-time to her Knowledge, nor to this Deponent since his Death, but that the same still remains unpaid and unsatisfied.

*A. N. of, &c. aged, &c. being sworn and examined, deposeth as follows.*

4. To the fourth Interrogatory this Deponent saith, that he did see the Bond or Paper-Writing, now to this Deponent produc'd at the Time

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of his Examination, bearing Date, &c. purporting, &c. sealed and delivered by the said *T.D.* as his Act and Deed, and thereupon this Deponent subscribed his Name as a Witness to such his Execution thereof, and saith that the Name *A.N.* so subscribed as a Witness is of this Deponent's own proper Hand-writing.

*Depositions on the Interrogatories for proving a Deed of Release, Mortgage, and Assignment thereof, with the Consideration of the Deeds, &c.*

*G.J. of, &c. Gent. being duly sworn and examined, deposeth, &c.*

1. **T**O the first Interrogatory this Deponent saith, that he this Deponent did see the Deed or Writing now produced and shewn to him this Deponent bearing Date, &c. made between, &c. and purporting a Bargain and Sale for one Year from *W.F.* to *W.G.* and *J.G.* of a Moiety of the Mills and Wears of, &c. signed, sealed and delivered by the said *W.F.* as his Act and Deed; and thereupon he this Deponent did indorse his Name as a Witness thereto, and that the Name *G.J.* thereon indorsed as a Witness is the proper Hand-Writing of him this Deponent. And this Deponent also saith, that he did see the Deed or Writing now produced and shewn to him this Deponent bearing Date, &c. and made between the said *W.F.* of the one Part, and the said *W.G.* and *J.G.* of the other Part, purporting a Release or Conveyance from



from the said *W. F.* to the said *W. G.* and *J. G.* of a Moiety of the said Mills and Wears of, &c. signed sealed and delivered by the said *W. F.* as his Act and Deed; and thereupon he this Deponent did indorse his Name as a Witness thereto, and that the Name *G. J.* thereon indorsed as a Witness is the proper Hand-Writing of this Deponent. And this Deponent also saith, that he this Deponent did see the said *W. F.* sign or subscribe his Name to the Acquittance indorsed on the said Deed of Conveyance in this Interrogatory mentioned for the Consideration Money; and thereupon he this Deponent did subscribe his Name as a Witness to the said *W. F.*'s Signing and Acknowledging thereof, and that the Name *J. G.* thereto subscribed as a Witness is the proper Hand-Writing of him this Deponent.

2. To the second Interrogatory this Deponent saith, that he this Deponent did see the Deed or Writing now produced, &c. purporting a Bargain and Sale for one Year from the said *W. F.* to the said *W. G.* and *J. G.* of the other Moiety of the said Mills and Wears of, &c. signed, sealed and delivered by the said *W. F.* as his Act and Deed; and thereupon he this Deponent did indorse his Name as a Witness thereto, and that the Name *G. J.* thereon indorsed as a Witness, is the proper Hand-Writing of him this Deponent. And this Deponent also saith, that he did see the Deed or Writing now produced and shewn to this Deponent, bearing Date, &c. and made between, &c. purporting a Release or Mortgage from the said *W. F.* to the said *W. G.* and *J. G.* of the other Moiety of the said Mills

and Wears of, &c. signed, sealed and delivered by the said *W. F.* as his Act and Deed; and thereupon he this Deponent did indorse his Name as a Witness thereto, and that the Name *G. J.* thereon indorsed as a Witness, is the proper Hand-Writing of him this Deponent. And this Deponent saith, that he this Deponent did see the said *W. F.* sign or subscribe his Name to the Acquittance indorsed on the said Mortgage in this Interrogatory mentioned for the Consideration Money; and thereupon he this Deponent did subscribe his Name as a Witness to the said *W. F.*'s Signing thereof, and that the Name *G. J.* thereto subscribed as a Witness is the proper Hand-Writing of this Deponent.

3. To the third Interrogatory this Deponent saith, that he this Deponent did see the Articles of Agreement now produced and shewn to him this Deponent, bearing Date, &c. and purporting Articles of Copartnership for carrying on a joint Trade in the Mills of, &c. aforesaid, signed, sealed and delivered by them the said *W. F. W. G.* and *J. G.* respectively as their Acts and Deeds; and thereupon he this Deponent did indorse his Name on the said Articles as a Witness to the same, and that the Name *G. J.* thereon indorsed as a Witness thereto is the proper Hand-Writing of him this Deponent.

4. To the fourth Interrogatory this Deponent saith, That the several Deeds before-mentioned were drawn by him, this Deponent, and for the most part by the Directions of the Defendant *W. F.* after the said *F.* and the Plaintiffs *W. G.* and *J. G.* had talked over their several Interests,

and agreed thereto, and he, this Deponent, had advised them what was necessary to be done; and though this Deponent was first apply'd to therein by the said *W. G.* yet the said *W. F.* declared to this Deponent, that he the said *F.* had sent for and ordered him, this Deponent, to be employ'd therein, and then the Defendant *F.* gave particular Instructions to this Deponent to draw the said Deeds, and the greatest Part of the most material Covenants therein; and this Deponent also saith, That neither the said *W. F.* nor the said *W. G.* and *J. G.* or either of them, shewed any Uneasiness at what was transacted, but the said *F.* particularly express'd great Satisfaction in his being concerned with the *G.'s*, and likewise with this Deponent, whom he returned Thanks and afterwards employ'd further; nor was there any Menace or Oppression of any Kind used to force the said Defendant *F.* into the Execution of the said Deeds, to the Knowledge or Belief of him, this Deponent; and this Deponent saith, that the said Defendant *W. F.* did see and approve of the Draughts of all the said Deeds; and afterwards the said *F.* desired this Deponent to expedite the Ingrossments thereof, which he the said *F.* compared himself with the said Draughts, on Reading the Deeds over, and then approved of the same; nor was any Exception made to the said Draughts as first settled, but as to the Time of the Commencement of the Interest of the, &c. on the Mortgage, which at the private Instance of one *J. M.* the Defendant *F.*'s Friend, was altered by this Deponent before ingross'd, and



readily consented to by the said *W.* and *J. G.* And this Deponent further saith, That the said *W. F.* freely and voluntarily executed the said Deeds, without any appearing Means to prevail upon him, or Inducement beyond what was expressed in the said Deeds; and that when the said Deeds were thus executed, the said *F.* seem'd highly pleased, nor did he make any Objection against the Payment of the *10l. per Cent. per Annum* in the Mortgage mentioned, or to any one of the Covenants or Clauses in the Articles of Copartnership; and the Allowance after the Rate of *10l. per Cent. per Ann.* was by the free Consent of the said *F.* and agreed to by him as Damages and a Recompence for Want of the Principal Money in the joint Trade, the said *F.* having represented that the said Trade would be greatly beneficial, even to One thousand Pounds *per Annum*, and the whole Consideration Money of the said Conveyance of the Moiety of the Mills being intended to be apply'd in the said Trade, which Allowance after the Rate of *10l. per Cent.* was inserted at the Instance of the said *F.* and approved of as legal on Perusal of the Draughts and Deeds themselves by very eminent Counsel; and this Deponent saith, That he believes the Money lent on the said Mortgage, if it was a Loan, was to oblige the said Defendant *W. F.* because the said *F.* earnestly desired the same, and gave great Assurances to the said *W.* and *J. G.* that he would soon pay in and deposite the same to be apply'd as aforesaid, and that the *G.'s* both of them declared to this Deponent they had much rather have the

2

Money

Money in the said Trade than the 10 l. per Cent. And the said *W. F.* did declare in the Hearing of him, this Deponent, that altho' the Money to be paid into Trade by the said *W. G.* and *J. G.* was to be paid by them by a Time limited, yet he the said *F.* would not insist upon it at the said Time, or otherwise than as the said *F.* had Occasion to make use of, and draw Bills for the same in the said Trade; and the Complainant *W. G.* above a Year ago offer'd to one Mr. *B.* the Defendant *F.*'s Solicitor, who came to the said *W. G.* on the Behalf of the said *W. F.* to pay the said *F.* what Money remained unpaid into Trade, in Case there were any, on his the said *F.*'s giving an Account how the same should be employ'd; and this Deponent also saith, That he, this Deponent, knows nothing of any further Offer made by the said *W. G.* or *J. G.* to pay in any Money to the said *W. F.* except it be of the Consideration Money of the Conveyance, mentioned in the Acquittance on the Back of the said Deed, great Part whereof he, this Deponent, saw paid to the said *F.* in Money, and as he, this Deponent, remembers the Remainder in Notes, on executing the said Deeds; and this Deponent believes he afterwards drew or advised the Drawing a Receipt from the said *W.* and *J. G.* to the said *W. F.* at his the said *F.*'s Request, for, &c. thereof, as so much received back and in Part of the Mortgage-money to be applied in the said joint Trade; but he, this Deponent, knows not of any Agreement entered into for any Purpose thereto relating.

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5. To the fifth Interrogatory this Deponent saith, That he, this Deponent, did see the Deed or Writing now produced and shewn to him, bearing Date, &c. made between J. G. of the one Part, and W. G. of the other Part, and purporting a Bargain and Sale for one Year, from the said J. G. to the said W. G. of his Half of the Moiety of the Mills and Wears of, &c. signed, sealed and delivered by the said J. G. as his Act and Deed; and thereupon he, this Deponent, did indorse his Name as a Witness thereto, and that the Name G. J. thereon indorsed as a Witness is the proper Hand-writing of him, this Deponent. And this Deponent also saith, That he did see the Deed or Writing now produced and shewn to him, this Deponent, bearing Date, &c. and made between, &c. purporting a Release or Conveyance from the said J. G. to the said W. G. of all that his Half of the Moiety, or his Quarter-part, of the said Mills and Wears of, &c. signed, sealed and delivered by the said J. G. as his Act and Deed; and thereupon he, this Deponent, did indorse his Name as a Witness thereto, and that the Name G. J. indorsed thereon as a Witness is the proper Hand-writing of this Deponent. And this Deponent saith, That he, this Deponent, did see the said J. G. sign or subscribe his Name to the Acquittance indorsed on the said Deed of Conveyance, for the Consideration Money of, &c. and thereupon he, this Deponent, subscribed his Name as a Witness to the said J. G.'s Signing thereof, &c.

6. To



6. To the sixth Interrogatory this Deponent saith, That he did see the Deed or Writing now produced and shewn to him, this Deponent; bearing Date, &c. and made between, &c. purporting a Remise or Release from the said J. G. to the said W. G. of all his the said J. G.'s Right, Title and Interest in and to a Moiety of the Mills and Wears, of, &c. aforesaid, granted in Mortgage to the said W. G. and J. G. by the Defendant W. F. signed, sealed and delivered by the said J. G. as his Act and Deed; and thereupon he, this Deponent, did indorse his Name on the said Deed as a Witness to the same; and that the Name G. J. thereon indors'd as a Witness is the proper Hand-writing of him, this Deponent.

7. To the seventh Interrogatory this Deponent saith, That he, this Deponent, did see the Deed or Writing now produc'd and shewn to him, this Deponent, bearing Date, &c. made between J. G. of the one Part, and W. G. of the other Part, and purporting a Grant and Assignment from the said J. G. to the said W. G. of all his the said J. G.'s Right, Title, Interest, Claim and Demand, of, in, and to a Moiety of the joint Trade and Copartnership carried on in the said Mills and Wears of, &c. and all Dividends, Rents, Tolls and Profits thereout arising, signed, sealed and delivered by the said J. G. as his Act and Deed; and thereupon he, this Deponent, did indorse his Name on the said Deed as a Witness thereto, and that the Name G. J. thereon indorsed as a Witness thereto, is the proper Hand-writing of this Deponent.

8. To

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8. To the eighth Interrogatory this Deponent saith, That he, this Deponent, did draw all the last mentioned Deeds and Writings, at the Request, and by the Direction of the said J. G. who apply'd to this Deponent therein, and gave the particular Instructions for the same; and that he the said J. G. did freely and voluntarily execute all the same Deeds, expressing himself well satisfied therewith on the Execution thereof.

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## *Of Publication, and the Setting down of Causes, and of Hearings thereon, &c.*

**P**ublication in a Cause is that Power or Liberty which is given the Six Clerks, or the Examiner in the Cause, either by Order of Court, or by Consent of Parties, to shew the Depositions openly, and to give out Copies of them.

And when both the Plaintiff and Defendant have examined what Witnesses they think fit, and are ready to go to Hearing, the Clerks of each Side may on Consent signified by their Signing each other's Books, *pass Publication*. Or where Witnesses are examined in Court by the Examiners, they may give each other Rules for Publication; first an ordinary Rule, and then a Day to shew Cause why Publication should not pass: But if the Witnesses are examined upon a  
Com-

Commission return'd, one Rule will be sufficient; and either Party, that has examined, and would have Publication pass, may give the Rule, &c.

The Day given by such Rule is a *Week*, which being expired and no good Cause shewn to the contrary, Publication shall pass. And such respective Rules for Publication must be given where Witnesses are examined in Court for the Plaintiff, or *ex parte* by Commission; or where none are examined, to conclude the adverse Party from Examining. And the Word *Rule*, as commonly understood, signifies a particular Order founded upon some general Order, or the common Course of the Court, touching the ordinary Proceedings in a Cause, and is issued without either Petition or Motion; under which Definition, come the Rules to answer, to reply, rejoin, examine Witnesses, to *publish Depositions, Hear the Cause, &c.* And all Rules are to be entered in Term-time in the House-Book; on entring whereof, Notice must be given to the Under-Clerk on the other Side, that so the Client may not be surprized. *Ord. Canc.* 130, 168.

Where the Cause is at Issue, and one Side hath examined Witnesses, but the adverse Party has not examined in Court, nor had a Commission, the other Party first gives him a Rule to *produce his* Witnesses, and after a second Rule to *examine them*; and if he doth neither, then a third Rule is given him to shew Cause that Day Seven-night, why Publication should not pass; and if Cause be not then shewed against it, Publication passeth. If any of the Depositions



tions in the Cause be taken before the *Examiner*; a Copy of the Rule, and Order for Publication, must be delivered to him; as well to authorize him to give Copies, as to tie him up from any further Examination: And after such Copy of a Rule or Order, whereby Publication is passed, is delivered to the Examiner, no Witnesses sworn before Publication shall be by him examined. *1 Chan. Caf. 126.*

But altho' no Witnesses are ordinarily to be examined after Publication is past; the Court hath some Times allowed new Proofs after it, where they have tended to the Illustration or Explanation of the former Depositions. As for Instance: A Party is supposed to have done such an Act, the Proof of which is but obscurely set forth in the Witnesses Depositions, they not giving any reasonable Testimony of their Knowledge touching the Performance thereof in particular: Now if such obscure Deposition hath past Publication, and the Deponent happen to die, others may well depose that they were present when that Act was perform'd, and so explain the first Depositions; and this hath been allowed of by the Court, where they have not deposed any Thing contrary to the former Depositions, or which might alter any Part of the Substance thereof.

The Court on Cause shewn, will enlarge the Time of Publication: And after Witnesses are examined, either upon Commission or in Court, Publication of the Depositions may be stayed by Motion, upon reasonable Cause shewn; as that the Party had other Witnesses to be sworn at the  
Time

Time of the Commission, &c. A Commission was granted returnable the first Day of the following Term; and the Court ordered that Publication should pass a Week within Term, and would not order it the Day the Commission was returnable.

If a Case happens that is out of the ordinary Rules for Publication, the Way to obtain an Order for Publication is by Petition or Motion; and if it be by Motion, there ought to be an Affidavit made of Notice of the same, &c.

By the Course of the Court, Publication and Hearing of the Cause are not to be in one and the same Term; except it be by special Order.

*An Affidavit of Notice of an intended Motion for Publication.*

In Canc. Inter *A. B. Quer. & C. D. Def.*

**E.** *F. of, &c.* maketh Oath, That he, this Deponent, did on the . . . Day of, &c. leave Notice in Writing at the Seat of Mr. *W. M.* the Defendant's Clerk in Court, as this Deponent is inform'd, with the said Mr. *M.*'s Clerk, to the Effect following; That the Plaintiff in this Cause intends to move the Court on, &c. or as soon after as Counsel can be heard, that Publication may pass in this Cause the, &c. Day of the next Term, and that the Plaintiff may be at Liberty to set down his Cause for Hearing, &c. This being the . . . Day of, &c. *Annoq; Dom. &c.*

*A Pe-*

*A Petition for enlarging the Time of Publication.*

*A. B. Quer. } To the Right Honourable, &c.  
C. D. Def. }*

*The Humble Petition of the Plaintiff.*

Sheweth,

**T**HAT the Matter in Difference between your Petitioner and the Defendant being in Reference, it was proposed, That by Consent Publication should pass on, &c. next, and the Cause be heard the next Term, in Case the Matter could not in the mean Time be amicably ended, and for that Purpose an Order by Consent was drawn up accordingly, whereby Publication is to pass the Day, &c. That the Matter hath depended under Reference till very lately; and your Petitioner doth now find that he is not like to make any amicable End thereof, and hath not examined one Witness, and Publication passes in three Days, &c.

Your Petitioner therefore humbly prays, that Publication may be enlarged till the first Day of the next Term, and may then pass, your Petitioner not desiring to put off the Cause from being heard the next Term.

*And your Petitioner shall pray, &c.*

*An*



*An Order for Publication to pass on a Day certain.*

Mercurii 15 die *Junii*, Anno Regni *Georgii*, &c.

Inter *A. B. Quer. C. D.* & al. *Defendentes.*

**U**PON Consideration this present Day had by the Right Honourable the Lord Chancellor, of the Plaintiff's humble Petition, and for the Reasons therein contained, his Lordship doth order, That Publication do pass in this Cause on the Day of, &c. instant; and that the said Cause be set down for Hearing within ten Days after. *If the Order be by Consent*, it is thus — It is this Day ordered, by Consent of the said Parties, Plaintiff and Defendants, and their Counsel, Clerks in Court, and Solicitors, That Publication do pass in this Cause the first Day of *Hillary-Term* next, and that this Cause be heard some Time the same Term; and that the Defendants do appear *gratis* to hear Judgment on ten Days Notice to their Clerk in Court.

*Order to enlarge the Time of Publication, and to adjourn the Cause, &c.*

Lunæ 10 die, &c. Anno Regni, &c. Inter *A. B. Quer. & C. D. Defendentem.*

**O**N opening of the Matter this present Day unto the Court by Mr. *L.* being of the Plain-

Plaintiff's Counsel; it was alledged, That the Plaintiff, by an Order made last Term, was to bring his Cause to a Hearing this Term, and Publication was to pass the first Day of this Term, and in the mean Time the Injunction in this Cause was continued; but that there having been a Treaty between the said Parties, and the Plaintiff being in hopes to accommodate the Matter, &c. hath not examined any Witnesses, neither hath the Defendant; and the Plaintiff hath set down the Cause for the last Day of Causes: It was therefore pray'd, that Publication may be enlarged 'till the last Day of the Term, and that the Cause may be adjourned to be heard some Day of Causes after the Term, and the Injunction be in the mean Time continued; which the Court held reasonable, and doth order the same accordingly.

*An Order that the Plaintiff procure his Cause to be set down to be heard, and Publication to pass, &c. or in Default, an Injunction to be dissolved.*

Jovis 5 die, &c. Anno Regni, &c. Inter *A.B.* &c.

**W**Hereas by an Order of the Day, &c. in, &c. Year of his Majesty's Reign, and for the Reasons therein contained, it was ordered that the Injunction formerly granted in this Cause should be revived and continued until the Hearing thereof, unless Cause, &c. and by a subsequent Order of, &c. last, the said Order was made absolute: Now upon Motion this  
Day

Day made unto this Court by Mr. T. being of the Defendant's Counsel, in the Presence of Mr. M. of Counsel for the Plaintiff, the said Defendant's Counsel alledged, That the End of the Plaintiff's Bill is to be relieved against a Bond of the Penalty of 50*l.* entered into by the Plaintiff to the Defendants as Church-wardens and Overseers of the Poor of, &c. to indemnify the said Parish against a Bastard Child, and that the said Defendants had expended above, &c. beyond what they had received, and have been delay'd for four Years past by the Injunction of this Court, being thereby put to great Expences; and therefore it was prayed, that the Injunction might stand absolutely dissolved: But upon Hearing the Plaintiff's Counsel, who offered to speed the Cause to a Hearing the next Term, and what could be insisted on by either Side; this Court doth order, that the Plaintiff do procure his Cause to be set down to be heard sometime the next Term, and thereupon the said Injunction is to be continued: And to the End the Cause may be heard as aforesaid, the said Defendants are by Consent to rejoin, and join in a Commission *gratis*, and both Sides to examine their Witnesses so, as Publication do pass the first Day of the same Term, and to appear *gratis* to hear Judgment, &c. But in Default of the Plaintiff's procuring his Cause to be set down for Hearing as aforesaid, the said Injunction is to stand dissolved.

*Causes are set down for Hearing* before the Lord Chancellor, or Master of the Rolls, the next Term after Publication of Course; and by



special Order, as above, the Plaintiff may set down his Cause the same Term that Publication is of. And if the Plaintiff doth not set down his Cause for Hearing in two Terms after Publication is past, it may be set down *ad requisitionem Defendentis*.

To set down a Cause to be heard, the Six Clerk in the Cause must be applied to six Days at least before the End of the Term, that he may inform himself of the State of the Cause, of the long or short Dependence thereof in Court, of the Time of Publication, of the Weight or Value of it, and all other Circumstances that are material to inform the Lord Chancellor or Master of the Rolls of, at the Time of setting down of Causes: And the Six Clerk shall not refuse to offer the same to be set down, if he be attended in such Time as aforesaid, and be not unprepared to inform the Court of the Nature and Circumstances of the Cause, &c. for which neither he, nor the Under-Clerks, or any of the Registers, are to take any Fee or Reward; but on the preferring and setting down of any Cause for Hearing, they are to be paid their termly Fees, &c. behind and unpaid; and if any Cause happen to be set down, wherein the Clerks and Officers shall not be paid their Fees and Duties, they may alledge the same in Stay of the Hearing. *Ord. Canc. 136.*

The Day a Cause is set down for Hearing on, must be sooner or later, according to the Priority of Publication, with respect to Causes presented for Hearing: And the antient Practice

was

*Hearings, &c. of Causes.* 573

was to present the Cause to be set down at the End of the Term, when the Lord Chancellor, &c. appointed Hearings for the ensuing Term. A Note or Paper of all Causes, that are ordered to be set down for Hearing, shall be set up and affixed by the Registers in their Office two Days before the same are respectively appointed to be heard; and in order thereto, all Clerks, Solicitors, and others, are to bring to the Register's Office, in due Time, all Orders for setting them down, or the said Causes will be put off 'till further Order. *Ord. Canc.* 196.

Where a Cause is ordered to be speeded or heard in some short Time, at the Request of either Party, he is commonly ordered to do every Thing *gratis*, without Process, in order to it: But ordinarily when the Cause is ready for Hearing, Process of *Subpœna ad audiendum Judicium* must be sued out, and served on the Party; which is issued upon a Note under the Hand of the Register, or one of his Deputies, of the Day that the Cause is set down for Hearing. It is to be serv'd personally, or left with one of the House or Family of the Party; and if it be above twenty Miles from *London*, it must be served fourteen Days exclusive before the Time to hear Judgment; (except it be in the Vacation between *Easter* and *Trinity* Terms, and then ten Days); but if within twenty Miles of *London*, if it be served ten Days before the Time to hear Judgment, it will be generally sufficient; and in the short Vacation, it needs be served only eight Days before the Return. And Affidavit of Service is required, be-

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cause of the Costs to be paid for not appearing,  
*Ec. Ord. Canc.* 116.

If the Plaintiff procures the Cause to be set down for Hearing, and serves not the Defendant with a *Subpœna ad audiend. Judicium*; if the Defendant attends, and the Plaintiff doth not proceed, or go on in Hearing the Cause, the Bill is sometimes dismissed, or however the Plaintiff must pay the Costs of the Day; for the Plaintiff is intended to be ready and present in Court to prosecute the Suit, and the Defendant might find the Cause in the Book or Paper of Causes, and so had Reason enough to attend for his own Safety; and because a *Subpœna* might be left with some of his Family, which is good Service tho' he had no Notice of it. But if the Cause were procured to be set down by the Defendant, and the Complainant appeareth not, the Defendant shall take no Advantage of it, unless the *Subpœna* to hear Judgment appears to have been served on the Plaintiff; and otherwise the Complainant is in no Default.

Ordinarily if the Party, who hath a Cause set down for Hearing, is not ready to hear it at the Day, but desires it may stand over to another Day, he must pay the other Party the Costs of the Day, if the Court thinks fit to indulge a further Day. Yet when a Cause is set down at the Defendant's Request, if the Plaintiff (not being served with Process to hear Judgment) and his Counsel attend, and the Defendant with his Counsel do not, the Plaintiff shall have no Costs, as he was not compelled to appear; and the  
Defendant



Defendant might chuse whether he would go on to have the Cause heard, or not.

So that there is a Difference between a Cause set down for Hearing by the Plaintiff, and by the Defendant. Formerly four Causes were generally set down to be heard in a Day, and after that Six only; but of late Years it is said to be common to have at least twenty.

*Of Hearings, and of Rehearings, &c.*

THE Clerks in Court on either Side, are to attend the Hearing of Causes: And where a Cause comes to be heard before the Master of the Rolls, the Clerks in Court on each Side shall attend, as they do when before the Lord Chancellor; to the End his Honour may be inform'd, if there be Occasion, that the Cause is ready for his Judgment, and that the Parties were regularly served with Process to hear Judgment, &c. as the Case shall require. *Ord. Canc. 210.*

By Order upon Consent, the Parties may appear, Answer, and go to Hearing *gratis*; and so they may do without Order, save only for so much as breaks in upon the common Course of the Court, as Time for Publication, &c. which cannot be altered by Consent, without a special Order for that Purpose. There is an ancient Order of Court, That at the Hearing, Certificates shall be brought, that the Bills and Answers are duly filed with the Six Clerk, and the Books duly signed; or else the Cause was not to be heard, and the Party to pay good Costs. And

by a late Order, no Motion shall be made to hasten a Cause to Hearing, which is either Adversary or by Consent, nor any Cause entered with the Register for Hearing, notwithstanding any Order made therein, without a Certificate first had from the Six Clerk, that the Pleadings are duly filed; for which no Fee is to be taken. *Ord. Canc. 77, 232.*

The Method or Manner of hearing Causes in Court is thus: The Parties on both Sides appearing, one of the junior Counsel for the Plaintiff opens the Bill, and another for the Defendant opens the Answer; after which, the Plaintiff's senior Counsel states the Case and the Matters in Issue, and briefly touches on the Proofs; and then they proceed to read first on the Plaintiff's Side, and then on the Defendant's, the Proofs to such material Points as are controverted, the Counsel on each Side debating the Matter either of Law or Equity, that arises thereupon, and the Plaintiff's Counsel always concluding the Argument; and lastly, the Court pronounces the Order or Decree, the Minutes of which are taken down by the Register. If the *Hearing is on Bill and Answer* only, then after the Substance of the Bill has been opened, and the Matter of Equity thereof duly represented to the Court, the Answer of the Defendant is to be wholly read, and must be admitted true in all Points, as to the Particulars charged in the Bill; and no other Evidence is to be given than what arises from the Answer it self, or being Matter of Record to which the Answer refers,

fers, and which is proveable by the Record. *Ord. Canc. 122.*

If a Deed or Will is confessed by the Answer, and referred to, there ought to be no Replication; but to proceed thereupon to Hearing on Bill and Answer: And if a Trust is confess'd by the Answer, there needs nothing further but to go to Hearing; and the Court will refer the Accounts of the Trustee to be stated by a Master, and when that is done, decree a Discharge of the Trustee on his paying the Balance. Whenever the Plaintiff finds sufficient Matter confessed in the Defendant's Answer, whereupon to ground a Decree, he is to proceed to Hearing on the Bill and Answer: But if in such Case the Court doth not think there is ground for a Decree, the Bill shall be dismissed with Costs; or the Plaintiff may be admitted to reply, if he desire it, on paying down 10*l.* within four Days after the Hearing, otherwise the Dismission to stand, &c. and the Order is to be drawn up accordingly; and if such Leave to reply be not prayed, or the said 10*l.* not paid, the Order of Dismission is to stand absolute, and, if duly signed and inrolled, will be a good Plea in Bar of a new Bill brought for the same Matter: Therefore the Plaintiff is to be well advised, that the Court be not put to an unnecessary Trouble, and himself to a certain Charge, in bringing his Cause to Hearing, which will not bear a Decree. *Ord. Ibid.* If the *Subpœna* to rejoin be not served, &c. tho' it be sued out, the Cause must be heard on Bill and Answer.



If the Defendant or his Counsel do not appear at the Day of Hearing, on *Affidavit* being made that he was served with Process to hear Judgment, the Cause is to go on; *viz.* the Bill is opened, and the Defendant's Answer read at large in Court, observing what he confesseth, denies, or does not directly answer unto; and then are read the Plaintiff's Proofs, as to what the Answer doth not confess, &c. And if the Matter appears plainly for the Plaintiff, the Court will decree the same for him. Tho' a Day shall regularly be given the Defendant to shew Cause to the contrary, at the Discretion of the Court, perhaps to the last Day of that Term or first of the next; the Defendant paying the Plaintiff, or his Clerk in Court, such Costs as the Court shall assess on this Hearing: And the decretal Order is to be drawn thus; *It is decreed so and so, unless the Defendant shall pay, &c. and shew good Cause, &c.* And before he is admitted to shew Cause against it, he shall produce a Certificate from the Plaintiff's Attorney in Court, That the Costs are paid; or an Affidavit of the Tender and Refusal. If upon a Hearing the Plaintiff doth not appear, (the Defendant (except the Cause was set down at his Request) shall be dismissed with Costs. *Ord. Canc., 136.*

Where a Cause comes to Hearing in this Court, which has been formerly decreed in the *Exchequer*, such Decree is first to be read, and then the Court proceeds to hear the rest of the Evidence on both Sides, &c. One exhibited his Bill

Bill in Chancery for Discovery of Evidences, and thereby made a Title to Lands which they did concern; the Defendant also entitled himself to the same Lands, and so justified the Detaining of the Deeds and Evidences for the Maintaining of his own Title: Whereupon after Examination of Witnesses on each Side, the Matter on the Hearing appeared doubtful, by Reason of a Repugnancy in the Evidence; and therefore the Court ordered the Plaintiff to bring an Action of Trespass against the Defendant, and that the Defendant should plead to the Freehold, and thereupon Issue should be joined and tried at the Bar of *B. R.* and that he that had the Verdict, should have his Possession established in the Chancery, 'till the other could make out a better Title. *Crompt. Jurisd.* 44.

If a Bill, setting forth a Deed of Settlement of Land in Trust, is brought to compel the Execution of an Estate, &c. and in his Answer the Trustee says, he believes there is such a Deed, as in the Bill is set forth, yet upon the Hearing, the Plaintiff shall not read the Deed without Proving it; for the Confession goes no further than as to what is set forth, and will not warrant the Reading of a Deed produced, tho' it hath such Clauses in it. 2 *Ventr.* 361. Upon a Bill for Tithes, the Defendant did not admit the Plaintiff's Title, but alledged an Extinguishment by Unity of Possession; and on the Hearing, the Court would not direct a Trial at Law, because the Plaintiff had made no Proof of the Value of the Tithes, &c. so that no Damage appeared

appeared to the Court whereon to ground a Decree for the Plaintiff, if the Verdict should go for him: And so the Bill was dismiss'd. *Hard. Rep. 4.*

'Tis said where there are cross Causes, they shall be brought on to Hearing together, if the Answer in the last commenced Cause be come in before the first Cause is heard: But if there be cross Causes on Bills exhibited by each of the Parties, and both Suits be published and ready for Hearing; that Party's Cause that doth not serve Process, shall not come on at the same Time with the other, except the other Party consents to it. If several co-incident Causes are brought to Hearing at the same Time, a Decree may be against one who is no Party to some of the Bills. 2 *Chan. Cas.* 234.

How Matters of Account, &c. may be examined after the Hearing of the Cause, before a Master of the Court of Chancery, &c. Vide *Interrogatories and Depositions.*

*Rehearings in Chancery* are granted where either of the Parties is not satisfied with an Order upon the Hearing. In which Case, on Petition signed by two Counsel, one whereof is to be of good Note in the Court, or must have been Counsel in the Cause, shewing some Matter for a Rehearing, and signifying that they conceive there is good Cause for the same; the Court will, at any Time before the Order is signed and inrolled, order the Cause to be reheard: And if it was heard before the Lord Chancellor, the Petition for a Rehearing must be



be to his Lordship; and if before the Master of the Rolls, then the Petition may be either to the Chancellor, or to him, but is usually to the former.

On a Rehearing being ordered, the Cause is commonly by the Order appointed to be set down for a certain Day on which it is to be reheard; and two Days at least before the Day for rehearing, the Party appealing must attend the Lord Chancellor with a true Copy of the Order or Decree appealed from, and of the Petition upon which the Rehearing was granted, that so his Lordship may be apprised of the Order and Decree, and of the Objections against the same. And whereas by an Order of the 12th of *May*, 1686. It was ordain'd, That no Rehearing or Appeal should be granted, except the Appellant should deposite 5 *l.* in the Register's Hands to recompence the other Party in Costs, if on such Rehearing no Relief be had; by a later Order it is encreased to 10 *l.* and by a subsequent Order the Sum to be thus deposited is made 20 *l.* *Ord. Canc.* 233.

An Order was obtained for a Rehearing, but some Opposition being afterwards made thereto, and that Matter with what was alledged for the Rehearing being referred to a Master, on his Report the Order was discharged; and the Court ordered five Marks of the 10 *l.* deposited in the Register's Hands for the Rehearing, to be paid to the Plaintiff, in whose favour the Decree had been made, for his Charge of the Motions and Attendances therein: This was before the Order for depositing 20 *l.* A Plaintiff in a Bill  
of

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of Revivor omitted to pray Process against one of the Defendants, but several Motions were afterwards made in the Suit in his Name, and a Commission executed in his Name, and then a decretal Order pass'd; the Omission in this Case was held to be no Cause for a Rehearing, the Defendants having made this Person a Party by the Proceedings, and all having submitted to it, his Name must be used as a Defendant to the End of the Cause. If a Matter of Fact be mistaken at the Hearing, &c. it is to be set right by Rehearing, and not otherwise. 1 *Chan. Cas.*

The Granting a Rehearing shall not any Way stop or hinder Proceedings on an Order or Decree appealed from, without special Order of Court for the same. *Ord. Canc.* 208.

### *An Order for Hearing of a Cause.*

Lunæ die, &c. Anno Regni, &c. Inter *A. B.* &c.

**I**T is this present Day ordered, by and with the Consent of all Parties, the Plaintiffs and Defendants, and their Clerks in Court, That this Cause be heard on Friday the 10th Day of *May* next; and all the said Parties are to attend the said Hearing *gratis*. Or, upon the Plaintiff's humble Petition this Day preferred to the Right Honourable the Master of the Rolls, and for the Reasons therein contained; it is ordered, that this Cause be put down to be heard on, &c. and that, &c.

*An*

*An Order for putting off a Hearing.*

Die & Anno, &c. Inter *A. B. Quer. C. D. Def.*

**W**Hereas by an Order of the Day, &c. upon Motion of the Plaintiff's Counsel, it was ordered that this Cause should be heard on, &c. Now upon Motion this Day made by Mr. *L.* being of the Defendant's Counsel, it was alledged that the Defendant was at Sea, but upon his Return in a Voyage from, &c. and having several Receipts and Notes which are necessary to be made Use of at the Hearing, but cannot be produced 'till such his Return; and for that the said Defendant hath also one or more Witness or Witnesses to be examined, who being at present far distant, cannot possibly be procured to attend at such Time as the Cause is appointed to be heard; whereupon it is ordered that this Cause be put off till, &c. in *Hillary-Term*, and then the said Defendant, without farther Notice, is to appear at the Hearing thereof.

*Order for a Rehearing of a Cause, on a certain Day.*

Die & Anno, &c. Inter *A. B. &c.*

**U**PON Consideration this Day had by the Right Honourable the Lord Chancellor of *Great Britain*, of the humble Petition of, &c. thereby setting forth, That the Petitioner  
and



and other Defendants claiming on several Interests, the Perception of the Rents and Profits of, &c. for the Residue of a Term of twenty-one Years, demised to the Plaintiffs in Trust: The Plaintiffs thereupon exhibited their Bill to have the Judgment of the Court, to whom the Benefit of the Trust belonged; and upon Hearing of the Cause in Court on the Day, &c. last past, before the Right Honourable the Master of the Rolls; it was ordered, that a Case should be made and agreed on by Counsel on both Sides, and the Court attended therewith, and thereupon the Court would pronounce such Decree therein as should be just: Which Case being accordingly made and agreed on, and the Master of the Rolls attended therewith the Day, &c. Counsel on all Sides was heard before the said Master of the Rolls at his House, assisted by Mr. Justice P. but at that Time no Decree or Opinion was pronounced until, &c. at which Time it was decreed by the said Master of the Rolls, That the Benefit of the said Trust did belong to the Defendant, &c. and his Wife, and not the Petitioner; whereby the Petitioner's and four fatherless Children, whose only Subsistence dependeth thereon, will be exposed to want: It was therefore prayed, That his Lordship would be pleased to vouchsafe a Re-hearing of this Cause. Whereupon it is ordered by his Lordship, That (on the said, &c. his Depositing 10*l.* with the Register within a Week) this Cause be set down to be re-heard before his Lordship upon Monday the 6th Day of, &c. next, at three of the Clock in the Afternoon, at which

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Time

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Time his Lordship will desire some of the Lords the Judges to assist him; of which Notice is to be given to the other Side, and in the mean Time the Signing and Inrolling the Decree is stayed.

*An Order upon a Hearing for the Allowance of a Demurrer to the Plaintiff's Bill.*

**T**HE Matter on the Demurrer put in by the Defendants to the Plaintiff's Bill, coming this present Day to be heard before the Right Honourable the Lord Chancellor, &c. in the Presence of Counsel learned on both Sides, the Scope of the Complainant's Bill being that, &c. (reciting the Substance of the Bill) whereunto the said Defendants having for Demurrer to the said Bill set forth, that, &c. upon full Debate and Hearing what was alledged on either Side, his Lordship held the said Demurrer to be good and sufficient; and doth order, that the same do stand and be allowed.

*Of*

*Of Dismissions and Decrees, and the  
Inrolling, Exemplifying and Execu-  
tion of Decrees; Also of Original  
Bills to execute them, and Bills of  
Revivor.*

**A** Dismission in the Chancery is a final Sentence or Decree of the Court whereby the Complainant's Bill or Suit is adjudg'd not fit for this Court to take Cognisance of: Also it may be in many Cases where the Court hath Cognisance of the Cause.

The Want of Service of the *Subpœna* has been held good Cause of Dismission of a Bill; sometimes a Bill is dismiss'd on the Defendant's Answer and Disclaimer; and oftentimes on a Plea or Demurrer to the Bill; for wherever any Plea or Demurrer is allowed, the Plaintiff's Bill is generally dismiss'd. A Cause may be dismiss'd for Vexation by Reason of a double Proceeding, as if the Complainant first brings an Action at Law, and then his Bill in this Court for the same Thing, &c. though he may proceed here, his Proceedings at Law being stay'd by Injunction; and if the Plaintiff cease or forbear to prosecute his Suit here, or does any Thing which seems to make himself a Judge of the Matter in Question; these are Causes of Dismission. A Cause being ended by Agreement or Arbitration, without Proceeding on the Bill, Order will be given to dismiss the Bill.



A Dismission may be upon the Plaintiff's own Prayer; and is often upon Hearing of the Cause, where it appears that the Merits thereof are not proper for a Court of Equity. Dismission upon Hearing may be for Want of Parties; for that the Matter belongs to another Court to determine, as to the Courts of Law, or Ecclesiastical Courts; or to another Court of Equity, as the Universities and Cinque Ports, &c. or for that the Matter in Demand is below the Dignity of this Court, in Respect of its Value, being under 10*l.* or in Respect of it's Nature, being in it self dishonest, accompanied with Fraud, Corruption or Oppression, having an evil Tendency, or for Want of Equity, &c. By antient Orders, Suits grounded upon nuncupative Wills; long Leases tending to establish Perpetuities; Bills for Rewards to make Marriages; for Agreements at Play, or Wagers; Bargains for Offices contrary to the Statute of *Edw. 6.* or upon Contracts for Simony or Usury, &c. are regularly to be dismissed on Motion, if they make up the whole Matter of the Bill, and there be no special Circumstances to induce the Court to allow them a Procedure. *Curs. Cancel. 210.*

Dismissions are usually pray'd and procur'd upon Motion, and had upon Plea or Demurrer to the Bill, or on the Merits of the Cause at the Hearing; and not after Examination of Witnesses, before the Hearing; though upon a Discontinuance of Prosecution, by Motion and Order of Court they may be had. Where the Plaintiff discontinues his Suit three whole Terms after that wherein the Defendant hath answer'd;

the Six Clerk certifying the same, the Cause may be dismiss'd of Course, after Rules given for that Purpose. If the Plaintiff delays replying 'till the third Term, the Court will upon Certificate and Motion, order him to speed his Proceedings, or that his Bill be dismiss'd: But if the Plaintiff replies soon after the Answer comes in, a Dismission is not to be moved for, 'till four Terms after the Replication is put in; and also in Case there have been no Proceedings after the Replication, either by Motions, References, Examination of Witnesses, &c.

The Defendant is not to move for a Dismission on the Matter of the Plaintiff's Bill, before a Demurrer, Plea or Answer be put in thereto by the Defendant. The Plaintiff may obtain Leave to dismiss his own Bill, either on Petition or Motion; but ordinarily no Dismission, or Retainer after a Dismission, will be granted on a bare Petition only, without Motion. After Appearance, and before Answer, or after Answer and before the Parties have examined Witnesses, the Plaintiff may generally of Course, on Motion, have Leave to dismiss his own Bill, with Costs: After Witnesses are examined, it is not to be prayed except it be upon special Cause shewn. 1 *Chanc. Case* 40. If a Dismission be upon a Disclaimer, Plea or Demurrer, the Plaintiff is to pay seven Nobles Costs. And if the Plaintiff dismiss his own Bill, or the Defendant dismiss it for Want of Prosecution, the Plaintiff must, by the late *Statute for Amendment of the Law*, pay full Costs to be taxed by a Master. 4 & 5 *Ann. c.* 16.

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If a Dismission be decreed upon a full Hearing, and drawn up, sign'd and inroll'd, it may not be alter'd by any Motion or Order afterwards made for retaining the Cause, but only by a Bill of Review; nor shall a new Bill be admitted but upon Affidavit of new Matter, (as in the Case of a Bill of Review) and a special Order of Court made thereon. But where the Dismission is for Want of Prosecution, and not on the Merits of the Cause; then sometimes on Motion and Excuse made for the Delay of Proceeding, and on Paying Costs, the Plaintiff's Bill by special Order is retained, or he hath Leave given him to exhibit a new one. And probable Cause of Suit may induce the Court to spare Costs, when the Plaintiff is dismiss'd on the Hearing; tho' if on such Dismission, there appears no such probable Cause, &c. the Plaintiff commonly pays full Costs. *Cary's Rep.* 34, 43, 74.

Upon a Dismission with full Costs, the Costs are to be taxed by the Master to whom the Taxation is referred, and his Report is to be had therein; and then without Confirmation of the Master's Report, you may have a *Subpœna* for your Costs, upon which, if they are not paid, Process of Contempt shall issue, as in other Cases. And where a Bill is regularly dismiss'd of Course, or by Order, for Want of Prosecution, &c. no Motion will be admitted to retain it without a Certificate from the Defendant's Clerk in Court, that the Costs of the Dismission are paid. In Case of a Dismission, which was not upon Hearing of the Cause; if any new



Bill be irregularly brought, the Dismission is to be pleaded: And after Reference and Report of the Contents of both Suits, and Consideration of the Cause of the former Dismission, the Court will order the Retaining or Dismission of the new Bill, according to Justice and the Nature of the Case. And touching the Causes of Dismission or Retainer, this Court exercises a discretionary Power therein. *Ord. Canc.* 144. *Cary's Rep.* 76, 110, &c.

If the Plaintiff and Defendant agree the Cause; or the Plaintiff disavows the Suit, the Bill shall be dismiss'd without Costs; upon Notice of the Motion to the Defendant, if he shew no Cause to the contrary: And a Plaintiff may either come into Court, and disavow the Suit, or by Warrant to Counsel under Hand and Seal, disavow it, as being brought without his Order or Privy, or against his Order though with his Privy; and may empower his Counsel to move that the Bill be dismiss'd. A Warrant being had for this Purpose, the Court orders it to be filed; and if there be more Plaintiffs than one, the Bill shall be dismiss'd only as to the Party who disavows the Suit. If a Bill well brought, without the Plaintiff's Privy be dismiss'd, as of his own Prayer, &c. the Court on proper Application made, will not only retain the Bill, but order the Abuse to be examined into, and punish the same.

When, by Order of this Court, Proceedings are had at Law to try an Issue, or the like; the Party shall have his Costs at Law allow'd, as well as his Costs in this Court: But upon Dismission

mission of a Bill here, whilst the Defendant prosecuted at Law upon a Bond, this Court refus'd to give him Costs at Law, because he should recover them there.

A Bill was brought to be relieved against an Action for Rent; and at the Hearing of the Cause it was decreed that the Parties should account, and that the Plaintiff should pay what was due to the Defendant on the Account; and the Account was stated by a Master, after which, the Plaintiff moved to dismiss his Bill, paying what Costs the Court would assess; but this was oppos'd on the other Side, for that the Judgment of the Court being given, the Plaintiff ought not to depart from it: And though it was insisted, that *quilibet potest renunciare Juri per se introducto*, that Rule was denied in this Case, as it had been in others, and the Plaintiff not permitted to dismiss his Bill. 1 Chan. Cas. 40.

On a *Certiorari* Bill in Chancery brought to remove a Cause from the Lord Mayor's Court, the Party's Witnesses being out of the Jurisdiction, and the Bill being also for an Account here touching other Matters, a *Procedendo* was denied; and after Hearing, the Cause was dismiss'd out of this Court. 1 Chan. Cas. 31.

A Bill was dismiss'd in Regard a Sentence was given against the Plaintiff in the Court of *Denmark* upon a Seizure, &c. 1 Chan. Cas. 237.

An Order for *Dismissing* the Plaintiff's *Bill*, for  
*Want of Proceeding*, with Costs.

*Die Lune, &c. Anno Regni Regis, &c. Inter*  
*A. B. &c.*

**U**PON Opening of the Matter this present Day unto this Court by Mr. *L.* being of Counsel for the Defendant, it was alledged, that the Plaintiff in *Hillary-Term* in the Year, &c. exhibited his Bill into this Honourable Court against the said Defendant, whereto the Defendant the same Term put in his Answer, since which the Plaintiff hath no Way proceeded in his Cause; and therefore it was prayed that the said Plaintiff's Bill may be dismiss'd out of this Court, with the ordinary Costs of seven Nobles, &c. which this Court holding reasonable, doth order the same accordingly.

Another Order for *Dismissing the Bill* of the Plaintiff, for *not replying* to the Defendant's Answer, &c.

*Die & Anno, &c. Inter A. B. Quer', C. D. Def.*

**F**Orasmuch as this Court was this Day inform'd by Mr. *T.* being of the Defendant's Counsel, that the Plaintiff had exhibited his Bill against the Defendant in this Court the Day, &c. whereunto the Defendant put in his Answer on, &c. since which Time, the Plaintiff hath not replied thereunto, or otherwise proceeded in  
the



the said Cause, as by the Certificate of the Six Clerk appeared; it was thereupon pray'd that the Plaintiff's Bill might stand dismiss'd, which this Court held reasonable, and doth order that the said Bill do stand absolutely dismiss'd, &c.

*Order for the Plaintiff to dismiss his own Bill, on Payment of Costs.*

*Die & Anno, &c. Inter A. B. &c.*

**U**PON Opening the Matter this Day unto this Court by Mr. *M.* being of the Plaintiff's Counsel, it was alledged that the Plaintiff having had Dealings with *T. A.* deceased, the Defendant's Testator, and he dying considerably indebted to the Plaintiff, the Defendant had prov'd his Will, and possess'd his Estate; and the Plaintiff having brought an Action for the Recovery of his Debt, the Defendant pleaded *plene administravit* thereto, so that to discover the said Testator's Estate, the Plaintiff exhibited his Bill; but the said Defendant had so manag'd and intrigu'd the said Estate, that the Plaintiff could not make Discovery thereof; wherefore, and in Regard there had been no farther Proceedings than only to Bill and Answer, it was pray'd that the Plaintiff's Bill may stand dismiss'd with 20*s.* Costs; which is order'd accordingly.

*An Order for the Plaintiff to Dismiss his Bill, on a Demurrer thereto not argued.*

**U**PON opening of the Matter this present Day unto this Court by Mr. T. the Plaintiff's Counsel, it was alledged that the Plaintiff having exhibited his Bill into this Court against the Defendants, the said Defendants had put in a Demurrer thereto; wherefore, and in Regard the said Demurrer hath not been yet argued, it was prayed that the said Plaintiff may be at Liberty to dismiss his Bill with twenty Shillings Costs; which this Court doth hold reasonable, and order the same accordingly.

*Note;* these Orders of Dismission are on Motions made in Court without coming to hearing, &c.

### *Of Decrees in Chancery.*

**A** Decree is the final Sentence or Order of the Court, determining the Right of the Matters in Question, on a full Hearing thereof on all Sides agreeable to Equity, and ordering the Parties accordingly, pronounced by the Lord Chancellor or Keeper, or Master of the Rolls; of which Notes or Minutes being taken by the Register, it is afterwards drawn up in Form in *English*, and then signed and inrolled in *Latin*. And until such Decree is so signed and inroll'd as aforesaid, it has only the Force of an *Interlocutory* Order; and is not final, but may be altered

tered upon a Re-hearing, or sometimes on a Motion in Court.

All Decrees and Dismissions ought to be drawn up as short as may be, and not to recite the Pleadings at large, but only the Sum of them briefly: And the Registers are to be careful in the penning and drawing up of Decrees, especially in Matters of Weight and Difficulty; and therefore by an antient Order, when the Registers are to present any Decrees to the Lord Chancellor to be signed by him, they ought to acquaint him which are Decrees of Weight; that so they may be read, and reviewed before his Lordship signs them. The Decree being drawn up in Form by one of the Registers, according to the Minutes and the Pleadings in the Cause, and afterwards signed and inrolled of Record, may not be reversed, altered or explained upon any Motion, or by Order; but the Party, if he has good Cause, is put to his *Bill of Review*, which is not admitted but by special Order upon good Cause shewn. *Ord. Canc.*

Decrees and Dismissions made or granted at the Rolls, or at *Westminster*, on such Days as the Lord Chancellor is not present, when they are drawn up, are to be first signed by the Master of the Rolls, or the Judges that sat at the Hearing of the Cause, and then presented to the Chancellor to be by him likewise signed; which done, they may be inrolled. And no Decree, &c. shall be presented by the Register, or his Deputy, or any other, to the Lord Chancellor, or Master of the Rolls, to be signed, before it is signed by that Six Clerk to whom it belongs,  
or



or by his Deputy in his Absence: Also no Decree shall be signed by the Register, without the Six Clerk's Hand thereto; and every Decree, &c. must before Inrollment, be signed as aforesaid. Where a Decree is pronounced, if the Defendant die before Inrollment; it has been allowed to be afterwards entered and inrolled: Likewise it has been denied, on the Circumstances of the Case. *Ord. Canc.* 56. 143. 2. *Chan. Cas.* 227, 248. See *Finch's Rep.* 169.

By the Orders of the Court of Chancery, all Decrees and Dismissions pronounced upon hearing Causes in this Court, are to be drawn up, signed and inrolled, before the first Day after the next *Michaelmas* or *Easter* Term, after the same shall be so pronounced respectively; and not at any Time after, without special Leave of the Court. And to the Intent the Decrees of this Court may be easily found upon Search, the Six Clerks are to keep a publick Book for the entring of all Decrees and Dismissions, which shall be made and signed by the Lord Chancellor; and to that End the Register, at the Beginning of every Term, is to deliver to one of the Six Clerks a List of all the Decrees, &c. signed by the Lord Chancellor the Term and Vacation before. *Ord. Canc.* 142, 143.

No Decrees, Dismissions, Commissions, &c. shall be carried to be inrolled, ingrossed, or copied, or otherwise used, by any of the Clerks, to their Chambers or elsewhere out of the Six Clerk's Office; unless it be of Decrees and Dismissions, after they are signed, to the Chapel of the Rolls, to be seen by the Usher of the Court

or his Deputy, that so he may judge what Parchment is necessary to be allowed for the inrolling thereof: And when and so soon as any Clerk shall have ingrossed, inrolled, copied, or used any such Decrees, or Dismissions, Commissions, &c. he is to bring the Original thereof back presently to his Master, or such of the Six Clerks to whom the Custody of the same appertains, for the more safe keeping thereof. And within one Term after any Cause shall be determined by Decree or Dismission, every Clerk that shall have any Decree, &c. or other Record touching the Cause in his Custody, shall deliver the same to the proper Six Clerk, &c. *Ord. Canc.* 55. 23.

Altho' after Inrollment, a Decree cannot ordinarily be altered, but by Bill of Review; yet where there is any miscasting or miscounting, or the Matters demonstratively appear from the Decree itself to be mistaken, it may be reconciled by Order of Court. After a decretal Order is pronounc'd, Matters of Account, and such like, which are necessary to perfect the Decree, may be and generally are examined and settled before a Master; but nothing can be examined, &c. which is against the Foundation of the Decree. And 'tis said, if an Account be decreed, and the Decree is inrolled, and then the Report of the Account is confirmed; there ought in Strictness to be a second Inrolment of the whole Report; but on Petition this is often dispensed with, and the Plaintiff allowed to take out a Writ of Execution of the whole, without such second Inrollment. A Decree when pronounced, may not be crossed or altered on Petition; tho' it may be

be thereby stayed 'till it can be moved for in Court, &c. 1 *Chan. Cas.* 54.

A Decree is not to be made upon Pretence of Equity, against the exprefs Provision of an Act of Parliament: But if the general Construction of an Act hath for a Time gone one Way, which afterwards by later Judgments hath been controlled; there Relief has been given on Matter of Equity arising before such later Judgments. Sometimes a Decree is made for the Defendant, when the Equity appears to be with him; and this is better than to admit a cross Bill to be put in by the Defendant, and going to new Proofs after Publication in the first Cause. If after a Decree, an original Bill is become necessary; as in Case the Decree be of 20, or 30 Years Standing; or that the Party neglecting to procure a Stay of Proceedings at Law, is ousted of his Possession by Judgment there; in such Cases, the former Decree may be set forth as Evidence: But the Court will not decree the same thing, meerly upon the Foot of that Decree; but will examine the Grounds and Reasons of that Decree, before they make a new one. 1 *Chan. Cas.* 45. 2 *Chan. Rep.* 128.

There being two Defendants in a Suit, one pleaded Outlawry in the Plaintiff, and the other Defendant answered, and a Decree was against him; afterwards the Defendant, who pleaded the Outlawry, brings an original Bill to set aside this Decree, and it was done accordingly, he having a Title paramount to the former Plaintiff's. 1 *Chan. Cas.* 3. If a Baron and Feme have a Decree for Money in Right of the Feme, and  
the



the Baron dies, the Wife and not the Executor of the Husband, shall have the Benefit thereof. *Ibid.* 27.

A Decree being past, the Defendant to a Bill, to execute a Decree, set forth a parol Agreement in Bar, to which the Plaintiff demurred, and the Chancellor allowed the Demurrer; for tho' the Agreement were subsequent to the Decree, yet the Decree shall precede: And if the Defendant will have Advantage of the Agreement, let him bring an original Bill; and if he have Advantage by it in a Way of Defence, one Witness may serve his Turn; but to an original Bill, if the Agreement be denied by the Answer, one Witness will not do. 2 *Chan. Cas.* And it has been adjudged, that no Decree can be made against a Man's Answer, upon the Proof of one Witness. 3 *Chan. Cas.* 123.

It was held, that a former Decree made on Behalf of a Mortgagor, was only in Nature of a Mortgage, and but a Security for the Money, altho' the same was made absolute: And it was said, that the Assurances made upon the Decree, tho' they were absolute, were to be guided by the Decree that directed them. In a Suit whereby it appeared that the Benefit of a Decree was assign'd, and defeasanc'd for Payment of Money: The Lord Chancellor dislik'd the Purchasing of Decrees, and said he was mad that would do it; but if the Plaintiff had it, he would not avoid the same, tho' he made the Question to be, whether the Assignment of a Decree was not a collateral and supplemental Security, and not

not an original Security, and so declared it to be. 1 *Chan. Cas.* 300.

In a Cause *Mich. 27. Car. 2.* it was decreed, that a Trial should be referr'd to Law, and that the Defendant should not insist on a Title set aside by the Decree: But at a Trial in *C. B.* the Defendant's Counsel insisted that the Decree was void; whereupon the Plaintiff read the Decree, and the Defendant was nonsuited, and then he moved the Court of Chancery for a Commitment of the Defendant, and Establishment of the Possession, &c. which was ordered *Nisi Causa*, and the Cause being shewn that the Trial was voluntary, &c. the Lord Keeper said you labour to get an Appeal to the King, and so to delay; let the Order stand. 1 *Chan. Cas.* 267. Decrees upon Suits brought after Judgment at Law, shall contain no Words to make void the Judgment; but only correct the Party's corrupt Conscience, and order him to make Restitution, &c. according to the Equity of the Case.

All the original Parties to the Suit, or those that are made Parties thereto by Process, &c. or to the Decree, being of full Age, *compos mentis*, &c. and such as claim under them, *pendente Lite*, are regularly bound by the Decree. But any Person that *bona fide* came to be interested in the Matter in Question by Conveyance from the Defendant, before the Bill was exhibited, and is not made a Party to the Suit, either by the Bill or by Order, is not bound by the Decree in the Cause: And therefore Purchasers coming in by Conveyance on valuable Consideration, before the Bill, not made Parties, are

not

not bound by the Decree. And when a Decree concerns Lands, even so low as Leases, if it be not entered in the Register's Docquet-Book within six Months after made, it shall not be binding to Purchasers: But he that purchaseth after a Bill exhibited against the Vendor, doth it at his Peril, &c. Where one comes in *pendente Lite*, and while the Suit is in full Prosecution, tho' without any Colour of Allowance, or Privy of the Court, the Decree generally bindeth: But if there were any Intermision of the Suit, or the Court were made acquainted with the Conveyance, &c. there the Court will give Order upon the special Matter. If Parties are not served with Process *ad audiend. Judicium*, they are not bound by the Decree, unless they appear *gratis* at the Hearing, &c. 2 *Chan. Cas.* 223.

If a Decree be by Fraud, the Plaintiff may then falsify an Agreement, &c. but it is not by Form, but the Substance of a Decree, that all are bound that come in *pendente Lite*. A Decree doth not bind the legal Interest of the Lands, &c. but the Person, who may by Decree be ordered to convey the Interest; and if he refuses to obey the Decree, the Court will imprison him until he conforms; also the Court, by Sequestration and Injunction, doth dispose of the Possession to the Party adjudged to have Right to the same. *Chan. Cas.*

To enforce Obedience to a Decree, when the same is perfected, it must be served on the Party, by shewing the Decree itself under the Seal of the Court, and delivering him a Copy thereof;



and then if he yields not Obedience thereunto, you may proceed to take out all the Proceſſes of Contempt, as Attachment, Proclamation, Commiſſion of Rebellion, Searjeant at Arms, Writ of Sequeſtration, &c. And when the Party is taken upon any of the ſaid Proceſſes, he is to be committed to Priſon, and not be ſet at Liberty 'till he hath performed that Part of the Decree which is preſently to be done, and given Security by Recognizance with Sureties, as the Court ſhall order, to perform the other Parts of the Decree (if any be to be performed) at future Days and Times appointed. Alſo it has been practiſed, that the Lord Chancellor has fined the Party for his Contempt in diſobeying a Decree, and afterwards eſtreated the ſame into the Exchequer; but this is held to be illegal, nor will the Court of Exchequer now iſſue Proceſs upon ſuch Eſtreats.

If the Decree is for Land, and the Party remains obſtinate after his impriſonment, the Court uſually grants an Injunction for the Poſſeſſion thereof, to be yielded up to him for whom the Decree was; and if this be diſobeyed, after it is ſerved, and Oath made thereof, the Court doth in that Caſe grant a Commiſſion to ſome Juſtices of Peace to put the other Party in Poſſeſſion: And if need be, a Writ of Aſſiſtance may be had directed to the Sheriff, &c. When the Decree is for Payment of Money, it muſt be ſerved and the Money demanded by the Plaintiff himſelf; or elſe he that ſerves the Decree muſt have a Letter of Attorney from the Plaintiff, to demand and receive it.

And a Sequestration is sometimes granted of the Goods and Profits of the Lands, not only for a Man's Wilfulness in standing in Contempt as aforesaid; but also where the Decree is for Discharge and Payment of Debts and Duties, or when it is for the Payment of any other Sum of Money.

Decrees, after inrolled, may be *exemplified*; the Exemplifications thereof are made out from the Inrollments, and sealed with the Great Seal: And such Exemplifications are as effectual to be pleaded or produced in Evidence, as the Decrees themselves.

Bills, Answers, Depositions, &c. Matters of Record, are exemplified, as well as Decrees.

The *Form* observ'd in *drawing a Decree*.

*Inter. A. B. Quer. & C. D. Defenden.*

WHEREAS in Trinity-Term, in the Year, &c. *A. B.* Gent. Complainant, did exhibit his Bill of Complaint into this High and Honourable Court of Chancery against *C. D.* Defendant, thereby setting forth that, &c. (*here recite the Bill briefly*) for Relief wherein, and to have a Discovery of, &c. the Complainant humbly prayed the Aid and Assistance of this Honourable Court, and Process of *Subpœna* to be awarded against the said Defendant to appear in this Court, and answer the Premises. Which being granted, and the Defendant served therewith, he appeared accordingly, and answered the said Bill; and by his said Answer confessed,

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and

and set forth, that, &c. (*reciting the Substance of the Answer*) to which Answer the Complainant replied, and the Defendant rejoined; and so the Parties being at Issue, divers Witnesses were examined in the Cause, and their Depositions duly taken and published, according to the usual Course of this Court; as by the said Bill, Answer, Replication and Rejoinder, Depositions of Witnesses, and other Proceedings, remaining of Record in this Honourable Court, may more at large appear. And the said Cause so standing in Court, the Day of, &c. last past, was appointed by this Court for the hearing thereof; on which Day, the same coming on to be heard and debated accordingly, in the Presence of Counsel learned on both Sides, the Substance of the Complainant's Bill and of the Defendant's Answer, &c. appeared to be as the same are herein before recited and set forth: Whereupon, and upon Debate of the whole Matter, and hearing what could be alledged on all Sides, this Court did think fit, and accordingly order and decree, that, &c. — Or, this Court thereupon, and upon hearing what could be alledged, &c. doth think fit to order and decree, and accordingly it is this present Day, (that is to say) the Day of, &c. in the Year, &c. by the Right Honourable P. Lord K. Lord High Chancellor of *Great Britain*, ordered, adjudged and decreed, that, &c. And that, &c. All which is the final Order and Decree of this Court in the Premises aforesaid.

*If a Cause be heard upon Bill and Answer only, and a Decree is made upon the Order for such Hearing; then after the Bill and Answer*  
are



*are recited and set forth, say, as by the said Bill and Answer remaining upon Record in this Honourable Court may more at large appear; and the Cause so standing upon the said Bill and Answer, the, &c. day of, &c. in the Year, &c. was by this Court appointed for the hearing thereof; on which Day the same coming to be heard accordingly on the said Bill and Answer, in the Presence of Counsel learned on both Sides, and upon reading, &c. in the said Answer mentioned, this Court doth think fit to order and decree, that, &c. And if it be a Re-hearing, upon the Order on hearing, then reciting the Order say thus; with which said Order the said Defendant being dissatisfied, he petitioned his Lordship for a Re-hearing of the said Cause, and to have the Order rectified in several Particulars; and thereupon, by an Order of the Day of, &c. it was ordered, that the said Cause should be re-heard the, &c. of, &c. and the same coming on to be re-heard accordingly, in the Presence of Counsel, &c. the Counsel for the Defendant insisted that, &c. (setting forth the Substance of the Defendant's Argument) whereto the Counsel for the Plaintiff replied that, &c. (reciting the Plaintiff's Reply, &c.) whereupon this Court declare and decree, &c. If upon the Re-hearing, the former Order be confirmed, say, whereupon, and upon Debate of the Matter, and hearing what could be alledged by the Counsel on either Side, this Court declared, that the Decree formerly pronounced in this Cause was just, and did accordingly order, that the same should stand, &c.*

*A Decree in Chancery, with Recital of a Master's Report, and a Confirmation thereof.*

**W**Hereas heretofore, that is to say, about the Term of, &c. which was in the Year of our Lord, &c. *A. B.* and *E.* his Wife, and *C. D.* an Infant by his Guardian, Complainants, exhibited their Bill into this High and Honourable Court of Chancery against *E. F.* and *G. H.* &c. Defendants, thereby setting forth that *T. D.* Father of the Complainants *E.* and *C.* being seised of divers Lands and Tenements lying in, &c. of the Value of, &c. *per Annum*, did, as a Provision and Portions for his younger Children, make a Lease thereof to the said Defendants *E. F.* and *G. H.* &c. for a long Term of Years, in Trust for raising, &c. And that the said *T. D.* on or about, &c. died, and being so dead, the Estate in Law was in the Defendants *E. F.* and *G. H.* &c. in Trust as aforesaid; and that, &c. being dead, and the Defendant *E. F.* being the next Heir, the said *E. F.* by Combination with the other Defendants, the Trustees, endeavoured to defeat the said Deed of Trust, and to hinder the Complainants from their Portions and Maintenance, and they refused to pay the said Complainant *E. B.*'s Portion which was due upon her Marriage, according to the said Deed of Trust, and Interest for the same, and refused also to allow the Complainant *C. D.* any thing for his Maintenance and Education; therefore that the Defendants might answer, and the Trustees discover and set forth the

the Deed of Trust, and the Date and Contents thereof, and might join in the Execution of the Trust; and to be relieved in the Premises, they the said Complainants humbly prayed the Aid and Assistance of this Honourable Court, and that Process of *Subpœna* might be thereout awarded against the said Defendants, to compel them to appear and answer the said Bill: Which being granted, and the Defendants therewith served, they accordingly appeared and answered, and by their Answer confessed that the said T. D. by his Indenture dated, &c. did demise and grant to the said, &c. all that Messuage, &c. to hold, &c. upon Trust, that the said Trustees should do and pay, &c. (*Here set forth the Lease and Trusts for educating and paying Sums for Portions to the Complainants*) as by the said Indenture in the Custody of the Defendant E. F. might appear; and that the said T. D. died soon after the making of the said Deed; and that, &c. entered on the Trust Lands, and did for some Time maintain the said Children, but he being an ill Husband, and becoming insolvent, the Defendant G. H. was desirous to have the Trust assigned to the Defendant E. F. And the Defendant, &c. by his Answer confessed he was made a Trustee by the Indenture before set forth, but that he never acted in the said Trust; nevertheless he was ready to do any Thing that this Court should think safe for him to do about the Performance of the said Trust; and all the said Defendants denied Combination, and concluded their said Answers with the general Traverse, as by the said Bill and Answers, remaining



filed and of Record in this Honourable Court, Relation being thereunto had, may more fully and at large appear: And the said Cause thus standing in Court upon Bill and Answer ready for hearing, a Day, *viz.* the, &c. Day of, &c. in the Year of the Reign, &c. was by this Court appointed for the Hearing thereof; on which Day, the same coming on accordingly to be heard, in the Presence of Counsel learned on both Sides, the Substance of the Complainant's Bill, and the Defendants Answers thereunto, appeared to be as is before recited. Whereupon, and upon debating the Matter, and hearing what was alledged by the Counsel on both Sides, this Court did think fit, and order and decree, that the said *E. F.* and *G. H.* should join in the Execution of the Trust, according to the said recited Indenture, and in Order thereunto should receive as well the Arrears of Rent, as the growing Rents and Profits of the said demised Premisses, and should thereout educate and provide for the Plaintiff *C. D.* according to the said Deed of Trust, in such Manner as Mr. *H.* one of the Masters of this Court should approve of; and should apply the Residue of the said Rents and Profits towards the Payment of the said, &c. due to the Plaintiff *E. B.* at her Day of Marriage, with Interest for the same after the Rate of, &c. together with the Costs of this Court, to be taxed by the said Master; and that the same might be more speedily rais'd, the said *E. F.* and *G. H.* as soon as conveniently they could, should raise Money by demising, letting, selling or mortgaging the Premisses, or any Part thereof,

to

to such Person or Persons, or for such Part of the said Term of, &c. Years, as the said Master shall approve of, and should pay the same to the Complainant *A. B.* and *E.* his Wife, and when the said *C. D.* should come to one and twenty Years of Age, the said Defendants *E. F.* &c. were to raise and pay to him his Sum of, &c. out of the Profits of the said Estate, or by leasing or mortgaging the same; and the said Defendants the Trustees were thereby protected and saved harmless by the Aid of this Court, and were to have all just Allowances of Monies by them or either of them expended and to be expended, in Relation to the said Trust, the same to be allowed by the said Master, &c.

Pursuant to which Order aforesaid the said Master made his Report, and certified the same into this Court, in these Words following, *viz.* *Die & Anno, &c. Inter A. B. & E. uxorem suam & C. D. per Guardian. Quer. E. F. & G. H. &c. Defendentes.* According to an Order or Decree of the Day, &c. last, in the Presence of the Plaintiff's Solicitor and the Defendant *E. F.* I have considered of the Matters thereby to me referred, and do think fit, that the Defendant *E. F.* be allowed the Sum of, &c. *per Annum*, for the Maintenance and Education of the Plaintiff *C. D.* &c. (according to the Indenture of Trust in the said decretal Order mentioned) out of the Rents and Profits of the demised Premises: I have also considered of the Plaintiff's Bill of Costs amounting to the Sum of, &c. and do think fit to moderate and tax the same at, &c. all which I humbly certify, and submit to

the Judgment of this Honourable Court, (*W. H.*) as by the said Report, remaining filed in this Court, may appear. And now upon Motion this Day made unto this Court by Mr. *L.* being of the Plaintiff's Counsel, and on producing of the said Report, it was prayed, that the said Report may stand confirmed, which Mr. *T.* being of the Defendant's Counsel not opposing; it is therefore, this present Day, &c. in the Year, &c. by the Right Honourable, &c. and by the said High and Honourable Court of Chancery, and the Power and Authority thereof, ordered and decreed, that the said Report, and all the Matter and Things therein contained, do stand ratified and confirmed, to be observed and performed by all Parties, according to the Tenor and true Meaning thereof. And it is hereby further ordered and decreed, &c.

*A Writ to execute a Decree concerning Lands.*

**G**Eorgius, &c. C. D. ac omnibus aliis quibus-  
cunque aliquod jus Stat. Titul. Termin.  
Annor. clam. Interesse vel Demand. ad vel in  
quodm Messuag. &c. ac divers. pecias Terræ si-  
ve Pasturæ continen. &c. acr. jacen. & existen  
in Paroch. de &c. in Com. &c. aut ad vel in  
aliqua inde parcella per vel subter te præfat.  
C. D. aut per Mandat. vel procuracionem tuam  
claman. vel vendican. & vestrum cuilibet, Sa-  
lutem. Cum quoddam finale Decret. sive judi-  
cium coram nobis in Cancellariam nostram inter  
A. B. Quer. & te præfat. C. D. Def. nuper fact.  
& reddit. extitit in hæc verba: Whereas, &c.  
(here



(here recite the Decretal Order) *Tibi igitur præfat. C. D. ac vobis omnibus aliis supradictis firmiter injungendo & præcipimus, quod omnia & singula in judicio sive decret. prædict. content. & specificat. quantum aut quoad vos seu aliquem vestrum in aliquo tangunt seu concernunt fac. & perimpletis, & exequamini, & quilibet vestrum faciat, perimplet & exequatur cum effectu indilate, juxta vim, formam & veram intentionem Decreti sive judicii præd. Et hoc nullatenus omittas, nec aliquis vestrum omittat, sub periculo Incumben. &c. Teste, &c.*

*Writ of Execution of a Decree for Payment of Money.*

**G**Eorgius, &c. C. D. Salutem. Cum per quoddam finale judicium sive decretum coram nobis in Cur. Cancellar. nostr. fact. Inter. A. B. Quer. & te præfat. C. D. Def. & geren. dat. die &c. ult. præterit. Ordinat. & adjucat. existit quod solveres præd. A. B. 500l. bonæ & legalis Monetæ Magn. Britan. Nosque Decret. dict. Cur. nostr. inviolabiliter observari volentes, tibi præcipimus & firmiter injungendo Mandamus quod immediate post reception. hujus Brevis præd. 500l. præfato A. B. &c. debito modo solvas seu solvi facias juxta Tenorem, effectum, veramque Intentionem Decreti præd. Et hoc sub periculo Incumben. nullatenus omittas. Teste, &c.

An

An Injunction for yielding up Possession of Lands  
Decreed to the Plaintiff.

**G**Eorgius, &c. C. D. necnon cuicumque al. Personæ sive quibuscunque al. Personis aliquod jus Stat. Titul. Interess. Possessionem, &c. de vel in Un. Messuag. & Tenement. vocat', &c. situat. jacen. & existen. in &c. in quodam finali judicio sive Decreto coram nobis in Cur. Cancell. nostr. Inter A. B. Quer. & te præfat. C. D. Def. geren. Dat', &c. ac in Brevi de Executione superinde mentionat. & express. aut de vel in aliqua inde parte per vel sub te præfat. C. D. haben. & claman', &c. Salutem. Ostens. est Nobis in dicta Curia nostra tali die, &c. ex parte præd. Quer. quod per Judicium sive Decret. præd. adjudicat. sit quod Messuag. & præmiss. prædict. Conveiata sint per te præfat. C. D. ad præd. A. B. Hæred. & assignat. suos donec & quousque Mille libr. in Questione sive demand. unacum Damag. & Custag. proinde præfat. Quer. solut. fuer. Quodque tu præfat. C. D. Brevi nostro de Executione Decreti prædict. debite inseruit. existen. Decretum prædict. performare aut Possessionem præmissorum deliberare recusasti; Et tu præfat. C. D. per Ordin. dict. Cur. nostr. geren. dat. die, &c. in Contemptu nostri dictæque Cur. nostr. adjudicat. & Prisonæ nostræ de le Fleet proinde commis. sis, Decret. præd. obedientiam reddere omnino adhuc recusas (minus iuste) ut dicitur: Nos ad hæc Considerationem habentes, tibi igitur præfat. C. D. ac vobis præfat.

fat. omnibus & singulis ceteris Personis supra-  
dict. & vestrum cuilibet, sub pœna, &c. de  
Terris & Catallis vestris & cujuslibet vestrum  
ad opus nostrum levand. firmiter injungend.  
præcipim. quod Possessionem Messuag. præd. ac  
Terr. eidem pertinen. & alior. præmissor. præd.  
& cujuslibet inde partis & parcellæ abhinc pe-  
nitus amoveatis & quilibet vestrum amoveat,  
ac quod præfat. Quer. Hæred. & assign. suos in  
Messuag. Terr. & præmiss. præd. in Decret. præd.  
mentionat. & express. & quamlibet inde par-  
tem & parcellam intrare & ingredi ac plenam  
& quietam Possessionem eorundem absque aliqua  
Interruptione quacunque habere, tenere, uti,  
frui, possidere, & gaudere permittatis, & qui-  
libet vestrum permittat, quovismodo. Teste, &c.

A Commission to Justices of Peace, to put the  
Party in Possession of the Land decreed.

GEorgius, &c. G. H. J. K. L. M. &c. Ar-  
mig. Justiciariis dict. Dom. Reg. pro di-  
vers. Feloniis & Transgression', &c. in Com. S.  
assign. Salutem. Cum quædam materia litis &  
Controversiæ pendebat nuper coram nobis in  
Canc. nostr. inter A. B. Quer. & C. D. Def. de  
pro & concernen. Fur. & Titulo cujusdam Mes-  
suag', &c. ac divers. Terrar', &c. Messuagio  
præd. pertinen. situat. jacen. & existen. in, &c.  
in Com. vestro de S. præd. nuper in Tenur. sive  
occupatione, &c. super auditu cujus quidem  
Materiæ coram nobis in dict. Canc. nostr. habit.  
possessio præmissor. præfat. A. B. per eandem Cur.  
nostram adjudicat. & Decret. fuit. Cumq; etiam  
nobis



nobis & Cur. Canc. nostr. præd. ex parte dict. A. B. nuper ostens. & demonstrat. erat quod ipse præfat. C. D. Possessionem præmiss. præfat. A. B. tradere & relinquere omnino recusavit easdem eidem A. & assignare seu conveyare juxta veram intentionem Decreti sive Judicii & Injunctionis, &c. præd. similiter denegavit, quod nolumus sic uti, nec debemus aliquo modo tolerare. Scitis igitur, quod Dedimus vobis, sive tribus vel duobus vestrum tenore præsentium, plenam Potestatem & Authoritatem ad Messuag. præd. accedendi & ingrediendi, ac plenam & pacificam Possessionem inde, & cujuslibet Partis inde, accipiendi & recipiendi, ac talem Possessionem sic per vos capt. & recept. eidem A. B. tradendi & deliberandi; Et ideo vobis Mandamus, quod immediate post Receptionem hujus Brevis vel Commissionis nostr. ad Messuag. & Terr. prædict. cum pertin. accedatis, ac Possessionem inde, & cujuslib. partis & parcell. inde capiat in manus vestras & recipiat, & cum ill. sic ceperitis tunc ipsi præfat. A. B. quietam & pacificam Possessionem præmissor. & cujuslibet inde partis tradatis & deliberetis, seu tradi & deliberari faciatis, juxta veram Intentionem Decreti præd. Ac ipsum præfat. A. in Possessione præmissor. sic per vos Possess. de tempore in tempus quotiescunq; necesse & opportun. fuerit contra omnes & omnimod. Perturbationes & Interruptiones quascunq; conservari, præservari, & incolumem reddi faciatis. Et hoc sub pœna pericul. Incumben. nullatenus omittatis. Teste, &c.

Or instead of this *Commission to Justices of Peace*, there may be the following Writ or *Commission to the Sheriff* of the County to the like Purpose.

A Writ of Assistance directed to the Sheriff of the County.

Georgius, & Vic. nostr. Com. S. pro Tempore existen. Salutem. Cum C. D. per Breve nostrum de Injunctiōe è Cur. Canc. nostr. nuper emanat. secundum quendam Ordin. coram nob. in dicta Cur. nostr. fact. inter A. B. Quer. & præd. C. D. Def. geren. dat. die, &c. ult. præterit. nuper præcept. fuit quod idem C. D. à Possessione cujusdam Messuag. vocat', &c. ac quarundarum Terrar. &c. in Com. tuo in Brevis prædicto & in quadam Commissione quibusdam Justiciariis nostris in & pro Com. præd. assign. nuper direct. ac in quodam final. Judicio sive Decreto coram nobis in dict. Cur. nostr. inter partes præd. nuper fact. & reddit. geren. dat', &c. mentionat. & specificat. ad tunc penitus amov. & quod permitt. præfat. Quer. A. B. in præmissa præd. intrare & ingredi, ac plenam & quietam Possessionem eorundem habere, tenere & gaudere. Jam quia datum est nobis intelligi quod præd. Def. C. D. Mandato nostro in Brevis de Execut. Decret. præd. & in Brevis de Injunctiōe præd. ac in Commissione præd. content. parere recusat, scias quod nos in Complemen. al. Ordin. coram nobis in dict. Cur. Canc. nostr. fact. inter Partes præd. geren. dat', &c. Dedimus ac Tenore præsentium Damus tibi plenam Potestatem.

&

Or

nobis & Cur. Canc. nostr. præd. ex parte dict. A. B. nuper ostens. & demonstrat. erat quod ipse præfat. C. D. Possessionem præmiss. præfat. A. B. tradere & relinquere omnino recusavit easdem eidem A. & assignare seu conveyare juxta veram intentionem Decreti sive Judicii & Injunctionis, &c. præd. similit. denegavit, quod nolumus sic uti, nec debemus aliququaliter tolerare. Scia- tis igitur, quod Dedimus vobis, sive tribus vel duobus vestrum tenore præsentium, plenam Po- testatem & Authoritatem ad Messuag. præd. ac- cedendi & ingrediendi, ac plenam & pacificam Possessionem inde, & cujuslibet Partis inde, ac- ciendi & recipiendi, ac talem Possessionem sic per vos capt. & recept. eidem A. B. tradendi & deliberandi; Et ideo vobis Mandamus, quod im- mediate post Receptionem hujus Brevis vel Com- missionis nostr. ad Messuag. & Terr. prædict. cum pertin. accedatis, ac Possessionem inde, & cujus- lib. partis & parcell. inde capiat in manus vestras & recipiat, & cum ill. sic ceperitis tunc ipsi præfat. A. B. quietam & pacificam Posses- sionem præmissor. & cujuslibet inde partis trada- tis & deliberetis, seu tradi & deliberari faciatis, juxta veram Intentionem Decreti præd. Ac ip- sum præfat. A. in Possessione præmissor. sic per vos Possess. de tempore in tempus quotiescunq; necesse & opportun. fuerit contra omnes & om- nimod. Perturbationes & Interruptiones quas- cunq; conservari, præservari, & incolumem reddi faciatis. Et hoc sub pæna pericul. Incumben. nullatenus omittatis. Teste, &c.



Or instead of this Commission to Justices of Peace, there may be the following Writ or Commission to the Sheriff of the County to the like Purpose.

A Writ of Assistance directed to the Sheriff of the County.

GEorgius, &c. Vic. nostr. Com. S. pro Tempore existen. Salutem. Cum C. D. per Breve nostrum de Injunctiōe è Cur. Canc. nostr. nuper emanat. secundum quendam Ordin. coram nob. in dicta Cur. nostr. fact. inter A. B. Quer. & præd. C. D. Def. geren. dat. die, &c. ult. præterit. nuper præcept. fuit quod idem C. D. à Possessione cujusdam Messuag. vocat', &c. ac quarundarum Terrar. &c. in Com. tuo in Brevi prædicto & in quadam Commissione quibusdam Justiciariis nostris in & pro Com. præd. assign. nuper direct. ac in quodam final. Judicio sive Decreto coram nobis in dict. Cur. nostr. inter partes præd. nuper fact. & reddit. geren. dat', &c. mentionat. & specificat. adtunc penitus amov. & quod permitt. præfat. Quer. A. B. in præmissa præd. intrare & ingredi, ac plenam & quietam Possessionem eorundem habere, tenere & gaudere. Jam quia datum est nobis intelligi quod præd. Def. C. D. Mandato nostro in Brevi de Execut. Decret. præd. & in Brevi de Injunctiōe præd. ac in Commissione præd. content. parere recusat, scias quod nos in Complemen. al. Ordin. coram nobis in dict. Cur. Canc. nostr. fact. inter Partes præd. geren. dat', &c. Dedimus ac Tenore præsentium Damus tibi plenam Potestatem.

&

Or

& *Authoritatem ad præmissa præd. in Decret. & Injunctiōe ac in Commiſſione præd. mentionat. & express. accedendi eaq; intrandi deinq; Def. præd. ac omnes al. in possessione Præmiss. existen. contra Tenorem Decret. ac Injunctiō. & Commiſſion. præd. è Possessione eorundem amovend. ac præfat. Quer. in plena, quieta & pacifica Possessione omnium & singulorum præmissor. prædictorum indilate, & sic de Tempore in Tempus toties quoties necesse fuerit ponend. eosq; Hæred. & Assignat. suos in tali possessione de Tempore in Tempus conservand. & quietand. Et ideo tibi Mandamus, quod immediate post Receptionem hujus Brevis ad Præmissa præd. accedas, eaq; intres, ac dict. Defenden. ac omnes al. in possession. Præmissor. existen. contra Tenorem Decreti Injunctiō. & Commiſſion. præd. è Possessione eorundem amoveas, ac præd. Quer. omnium & singulor. Præmissor. præd. indilate habere facias plenam pacificam & quietam Possessionem eosq; Hæred. & Assignat. suos de Tempore in Tempus toties quoties necesse fuerit in tali Possessione ponas & constitues seu poni & constitui facias, ac de Tempore in Tempus in eadem præserve, custodias, & continues, & præservari & custodiri facias, juxta Tenorem veramq; Intentionem Decreti & Brevis nostri de Injunctiōe & Commiſſionis præd. Teste, &c.*

*An Exemplification of a Decree.*

**G**Eorgius, &c. Omnibus ad quos præsentēs Literæ nostr. pervenerint salutem; Inſpeximus Irrotulamentum cujusdam final. Judi-

*cii sive Decreti coram nobis in Cur. Canc. nostr. nuper fact. & reddit. ac in Rotulis dict. Cur. nostr. Irrotulat. ibidemq; de Recordo remanen. cujus Tenor sequitur in hæc verba, &c. (And so set forth the Decree verbatim) Nos autem Tenorem Irrotulament. finalis Judicii sive Decreti prædict. ad Requisitionem præd. Quer. (or, ad Requisitionem E. F. &c.) duximus exemplificand. per præsentēs: In cujus Rei Testimonium has Literas nostras fieri fecimus Patentes. Teste, &c.*

*The Exemplification docquetted.*

**I**N *Canc.* 15 Aprilis, 1728. An Exemplification of the Inrollment of a Decree in this Honourable Court, in a Cause wherein *A. B.* is Plaintiff, and *C. D.* and others are Defendants; exemplified at the Request of, &c.

*Examinat. per nos*  $\left\{ \begin{array}{l} \text{E. L.} \\ \text{M. T.} \end{array} \right\}$  *In Canc. Mag'ros.*

*Then the Exemplification is certified thus:*

**W**E the Masters in Chancery, whose Names are hereunto subscribed, have carefully examined the Exemplification mentioned in the Docquet on the other Side, with the Inrollment thereof; and do certify the same to be a true Exemplification of the said Inrollment.

*E. L.  
M. T.*

*And*



*And on the Back is indorsed,*

An *Exemplification* of a Decree in Chancery in a Cause there, wherein, &c. exemplified at the Request of, &c.

An *Original Bill* may be brought to execute or confirm a Decree; or to avoid or revive Decrees. A Decree has been avoided by original Bill, upon a Matter subsequent to the Decree; but may not be explained on a Matter precedent to it. And this Bill lies to put a Period to a temporary Decree, &c. After a Decree for Enjoyment of Lands, a second Bill may be exhibited for the mean Profits, and for further Assurance, &c. 1 & 2 *Chan. Cas.*

*Bills of Revivor of Decrees*, and other Proceedings, are necessary when a Suit happens to be discontinued; which is generally by Reason of the Death either of the Plaintiff or Defendant, before the Decree inrolled. Where a Decree is inrolled, and a Party dies, or a female Plaintiff marries, or there have been no Proceedings for a Year past; the Decree and Proceedings must be revived by a *Subpœna Scire facias*: 'Tho' in this Case a Revivor by Bill hath been allowed. A Bill of Revivor lieth not upon a Decree of a long Standing; but the Party is to exhibit an *Original Bill*: Also a Bill of Revivor lies not to revive a Decree made for Costs only. 1 *Chan. Cas.* 37, 216. 2 *Chan. Rep.* 195.

It is said, that where one can revive by a *Subpœna Sci. fac.* it is in his Election to do it  
 2 either

either by that Process, or by *Bill of Revivor*. And if the Parties, that would revive the Decree, be in Privy of Blood to the first Parties, as Heirs; or in Privy of Contract, as Executors, or Administrators, they may revive it by *Subpæn. Sci. fa.* which is obtained either on Petition or Motion, and must be served two Days at least before the Return thereof; and on the Return of the *Subpæna*, if no Cause be shewn to the contrary, the Decree, on Affidavit of Service, and a Motion to that Purpose, will be ordered to stand revived, *nisi, &c.* and in such Case it is to be revived without Costs to the other Party. But if there be neither Privy in Blood, nor in Contract, the Decree or Cause must be revived by *original Bill*; and not by *Scire facias* or Bill of Revivor. And therefore an Assignee, or a Devisee, cannot have a Bill of Revivor, being in Nature of Purchasers only. 2 *Chan. Rep.* 67. 1 *Chan. Cas.* 122, 174. *Ord. Canc.* 115. On an original Bill in Nature of a Bill of Revivor of a Decree, a Devisee shall have the same Advantage of the Decree as an Heir or Executor. 1 *Vern. Rep.* 548.

A Decree was signed and inrolled, omitting Part of the Matter decreed; and the Defendant being dead, (so that there was no helping it by Motion) a Bill of Revivor was brought to revive, as was alledged, the Part of the Decree which was omitted; tho' in Truth it extended to the whole Decree: To this the Defendant pleaded, That the Decree being inrolled, a Bill lay not, but a *Subpæna Sci. fac.* But the Plea and Demurrer were over-ruled; and it was held,

S f

that

that a *Scire fac.* would only have revived the Decree, and the Proceedings before it, but not those afterwards. 1 *Chan. Cas.* 37.

*A Bill of Revivor of a Decree.*

**H**umbly Complaining sheweth, &c. your Orator *A. B.* of, &c. that whereas your Orator did heretofore, that is to say, on or about the Day of, &c. in the Year, &c. exhibit his Bill of Complaint into this High and Honourable Court against *C. D.* of, &c. thereby setting forth, That, &c. (*reciting the original Bill in the Cause*) and that your said Orator might be relieved in the Premisses, your Orator pray'd the Aid and Assistance of this Honourable Court, and that for that purpose Process of *Subpœna* might be awarded against the said Defendant, to appear in this Court, and answer the said Bill; which Process being granted, and the Defendant therewith served, the said Defendant appeared and answered the said Bill; to which Answer, your Orator replied, and the Defendant rejoined, and both Parties join'd in suing out a Commission, and a joint Commission issued for the Examination of Witnesses, by Virtue whereof divers Witnesses were examined on both Sides, and their Depositions duly taken, returned and published, according to the usual Rules and Practice of this Court, as by the said Bill, Answer, Replication, &c. now remaining in this Court may appear: And the Cause so standing in this Court upon the said Proceedings as aforesaid, the Day of, &c. was by the Order of this



Honourable Court appointed for the Hearing thereof, upon which Day the same coming on to be heard accordingly, in the Presence of Counsel learn'd on both Sides, the Substance of the Complainant's Bill and Defendant's Answer, &c. appeared to be as is above recited, whereto it was insisted by the Defendant's Counsel, that, &c. and also that, &c. whereupon, and upon Debate of the Matter, and Hearing of what could be alledged on either Side, your Lordship did Order, that, &c. as by the said decretal Order, &c. may appear. *But now so it is*, may it please your Lordship, that before any further Proceedings were had in the said Cause, the said *C. D.* the Defendant in the said Cause died, whereby the said Suit and the Proceedings thereupon became abated; and the said *C. D.* having in his Life-time made his Will, and one *E. D.* of, &c. Executor thereof, who since the said *C. D.*'s Death hath proved the said Will, and taken upon himself the Burthen of the Execution thereof, and possessed himself of the personal Estate of the said *C. D.* sufficient to satisfy your Orator's said Demands, &c. And forasmuch as by the Death of the said *C. D.* the said Suit and Proceedings are become abated, as aforesaid; and to the End the same Suit and all Orders and Proceedings therein so abated, may stand and be revived against the said *E. D.* and be put into the same Plight, State and Condition, as the same were in at the Time they became abated: *May it please your Lordship*, the Premisses considered, to grant unto your Orator his Majesty's most gracious Writ of *Subpœna ad*

*Revivendum*, issuing out of this Honourable Court, and under the Seal of the same Court, to be directed to the said *E. D.* therein, and thereby requiring him the said *E. D.* personally to be and appear before your Lordship in this Honourable Court, then and there to shew Cause, if he can, why the said Suit, Orders and Proceedings so abated, as aforesaid, should not stand and be revived, and put into the same State and Condition as the same were in at the Time of the Abatement thereof, and answer all and singular the Premisses aforesaid, and also stand to and abide such further Order and Decree therein, as to your Lordship shall seem meet, &c.

*And your Orator shall ever pray, &c.*

*Vide* the Form of this *Subpæna*, and of the *Subpæna Sci. fac.* for performing of a Decree, under *Writs of Subpæna*, &c.

*Of Bills of Review to reverse Decrees  
for Error, and Bills of Reversal of  
Decrees in other Courts.*

**A** Bill of Review is a Petition to reverse a Decree made in a Cause, upon some *Error in Law* appearing in the Body of the Decree it self; without any Averment of Matter *dehors*, or further Examination of Matters of Fact before the Decree, or of any Matter of Record that might have been heard at the Time of the making thereof.

This Bill is not to be brought, except Leave be given for the same, either on Petition or Motion: And formerly it was not allowed, unless the Party who preferred it entered into a Recognizance with Sureties to satisfy the Costs and Damages for the Delay, in case the Matter thereof were found against him. But since, by Order of Court, 10*l.* was to be deposited in Court as a Security; and by a later Order 20*l.* is to be now deposited, which is to be done before the Bill of Review be filed, &c. as in the Case of *Bills of Revivor*, so also in Bills of Review, none but such as are Parties, or Privies, can ordinarily bring them; but in some Cases, where a Man's Interest is affected, or he is grieved by a Decree, one who is neither Party nor Privy, may bring this Bill. *Ord. Canc. 1 Chan. Cas. 272.*



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As the End of a Bill of Review is to reverse a Decree formerly made, in order to proceed therein, first a Copy of the Decree, after it is sign'd and inrolled, is to be procured; and then reciting the former Proceedings, as they are recited in the Decree, you are to set forth the Party's Case, and assign the Reasons why the Decree should not be binding, as for Error in Law, &c. And though this Bill cannot regularly be brought upon any Matters in Fact, or other Matters of Record than the Decree it self; yet if there be Oath made of the Discovery of *new Matter*, which could not possibly be had or used at the Time when the Decree passed, a Bill of Review may be exhibited by Leave of the Court, but not otherwise. But no Witnesses, which were or might have been examined on the former Bill, shall be examined on a Bill of Review. 2 *Chan. Rep.* 66.

If a Decree in Chancery be against a Statute, it may be reviewed and reversed: So if the Chancellor errs in a Decree in Matter of Law, and it appears within the Decree; or if he makes a Decree upon the Law on his own Opinion, against the Opinion of the Judges; this Decree may be reviewed, &c. But if the Lord Chancellor commits any Error in his Decree upon a Matter of Fact, it is said the Decree is final, and cannot be reviewed, because the Parties cannot go to a new Examination of Witnesses now; for after Publication this may not be done. And where the Decree is final, and cannot be reviewed, it is also observed, that it cannot be altered by *Original Bill*; unless for Matter subsequent. And

And yet if the Chancellor err in his Conscience, upon a Matter of Fact proved before him, there may be a Review of this Matter; because there needs no new Examination, but it may be review'd upon the old Depositions, and this is usual. 1 *Roll. Abr.* 382. 1 *Chan. Cas.* 45.

It has been insisted on as a Rule, That nothing shall be a Ground to direct a new Trial to avoid a Judgment at Law, that would not be a Ground for a Bill of Review to reverse a Decree; and that a Confession subsequent to the Decree is no Ground for a Bill of Review: Nor is the Want of any Evidence which might have been used in the first Cause, and of which the Party had then Knowledge. If an Infant be Plaintiff, he is bound by the Decree of this Court; except there be a saving Clause therein, in which Case he may, upon Petition to the Lord Chancellor, within six Months after he comes of Age, have the Cause reheard: But 'tis said, there ought of Course to be such saving Clause for an Infant Defendant; and if there be not, the Decree is erroneous, and he may help himself by Bill of Review. An Account was decreed, pending which the Suit abated; and yet the Account was carried on, finished and confirmed by Decree, and held to be no Error or Cause of Reversal, on a Bill of Review brought. 1 *Chan. Cas.* 44, 122.

A Bill of Review is in Nature of a Writ of Error. If a Decree, or any Part of it, be of Things impossible; or if it be repugnant, or one Part contradictory to the other, it will be erroneous, and may be reversed on a Bill of Review:

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But tho' there be apparent Error in the Decree, if the Party has rested under it 15 or 20 Years, the Court in some Cases will not reverse it upon a Bill of Review; also the Court will not reverse a Decree for Want of Form, or Mistaking in an Account; for that may be helped by a Master, without Reviewing. No Bill of Review, or other new Bill, shall be admitted to change or alter a Matter already decreed, 'till the Party hath obey'd the Decree in all Things, which stand upon the Strength of the Decree only; wherein the Court can set him in as good a State again as he was, in Case the former Decree should happen to be reversed: As where the Decree is to yield up the Possession of Lands, deliver Writings, or pay Money, &c. he must first perform these Things before he is admitted to a Bill of Review; except the Court see Cause to dispense with the Manner of the Performance, *viz.* if Money is decreed, the Court will sometimes accept of good Security. 1 *Chan. Cas.* 86. 1 *Chan. Rep.* 140.

But if the Decree requires an Act to be done, which would extinguish the Party's Right at Common Law; such as conveying Lands, releasing a Debt, acknowledging Satisfaction, cancelling Evidences, &c. these Parts of Execution of the Decree will be spared, and of Course be stayed by Order of Court, until the Bill of Review be determined: Tho' the Plaintiff in Review must move for an Order to stay the Execution of the Decree in those or the like Particulars; or what else is proper to be stayed, if he expect to have it so. 1 *Chan. Cas.* 42.



A Decree ought to be grounded on Fact; for the Plaintiff in a Bill of Review, cannot alledge Matter of Fact, contrary to what is stated in the Decree to be proved. In a Bill of Review, upon drawing up the decretal Order, the Matter on which the Decree was made was declared to be proved, and the Case stated different from the Fact: Now the Errors assigned by the Bill were, That the Decree was grounded on Matters not proved, and instanced in what Particulars, and that the Matters mentioned in the Decree to be proved, were not so, &c. A Demurrer was put in to this Bill of Review, That the Decree contained no Error in Law, and that the Matters alledged for Error were but Mis-judgment, &c. and upon Hearing and Debating what was alledged in this Cause, it was declared, That on a Bill of Review the Causes for Review must arise and appear upon the Case as it is stated in the Decree, and that the Facts must be admitted as there stated.

And it was said, that where the Fact is mistaken, upon which the Court grounded their Judgment, it is proper in such Case to have the Cause reheard, before the Decree is inrolled; but after the Decree inrolled, that is no Cause or Ground for a Bill of Review; for the Decree inrolled is Matter of Record, and to be tried by the Record it self, and must be taken to be true; and so the Demurrer was allowed. And it was also observed, that the Reason why Review did not lie, was because as the Decree was drawn up no Error appeared in it. 1 *Chan. Cas.* 54, 55.

If

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If there be a Decree made by Commissioners on the Stat. 43 *Eliz. of Charitable Uses*, and Exceptions put in against it in Chancery, and there 'tis heard, examined and confirmed, it cannot be further examined upon a Bill of Review; because the Authority of the Chancellor is given by the Act, which mentions but one Examination: So that it is not like a Decree made by the Chancellor, by his ordinary Authority. Resolved by several Judges upon a Reference to them out of the Chancery. *Cro. Car.* 351.

The Plaintiff who had a Decree, brought a Bill of Review, and thereby complained, That he had not enough decreed him; and a Demurrer being made thereto, for that if a Bill of Review lies, it is only for him against whom the Decree of Dismissal is; after a long Debate, the Demurrer was allowed, and the Bill of Review dismiss'd. And where a former Bill of Review had been dismiss'd, the Party brought another suggesting further Errors, &c. But this was dismissed also; on the Maxim *Interest Reipublicæ ut sit finis Litium*. 1 Chan. Caf. 1.

A Decree passed where the Bill was never answered, but taken *pro confesso*, tho' the Bill was never read in Court, as it ought to have been; and thereon a Bill of Review was brought, and on Demurrer dismiss'd: Whereupon the Heir brought another Bill of Review, and altho' there was manifest Error not only in the Form of the Decree, but in the Right likewise; yet the *Lord Keeper North* said, there was no Remedy but in *Parliament*. 2 Chan. Caf. 133.

But

But there may be a Bill of Review, after a former whereon a Decree was reversed, exhibited by the other Party, &c.

*A Bill of Review to reverse a Decree.*

*To the Right Honourable P. Lord K. Lord High Chancellor, &c.*

**H**Umblly complaining sheweth unto your Lordship, your Orator *C.D.* of, &c. that *A.B.* of, &c. did in the Year, &c. exhibit his Bill against your said Orator, and also against, &c. thereby setting forth, that whereas, &c. and for Relief therein, the said *A.B.* the then Complainant pray'd the Process of this Honourable Court against your Orator and the said, &c. wherewith your Orator then Defendant being serv'd, did appear, and in, &c. Term, in the Year, &c. your said Orator put in his Answer to the said Bill, and thereby did deny, or confess, &c. (*according to the Substance of the Answer*) and denied all Combination, as by the said Bill and Answer, Relation being thereunto had, more fully appears; whereupon the said *A.B.* replied, and your Orator rejoined; and Issue being joined, Witnesses were examined, &c. and the said Cause was set down to be heard, &c. and the said Cause coming to be heard on, &c. upon Opening of the then Plaintiff's Bill, and Reading your Orator's Answer, and also on Reading the Depositions of Witnesses, &c. it was order'd by the Court, by and with the Consent of both Parties, that the Custom



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from set forth in the said Bill, should be referr'd to a Trial at Law, in an Action upon the Case, to be brought by the said *A. B.* against your Orator in the Court of, &c. after the usual Manner; that in Consideration of 1 s. given by the said *A. B.* to your Orator, your Orator did promise to pay the said *A. B.* the Sum of, &c. if he the said *A. B.* could prove the Custom alleged in the said Bill, in which Action your Orator was to confess Circumstances, *i. e.* the Consideration and *Assumpsit*, and both Parties to stand only upon the said Custom; which said Action was to be tried at the Bar of, &c. by a Jury of the County of *Middlesex* on the Day of, &c. then next following; and the Equity upon the said Plaintiff's Bill was reserved to the Court 'till after the said Trial should be had as aforesaid, as by the said Order may also more fully appear; and the said Trial at the Bar of, &c. being had accordingly, the then Plaintiff proved the Custom, and obtained a Verdict in his Behalf; whereupon the Court was mov'd on, &c. that inasmuch as the said *A. B.* had obtained a Verdict upon the said Trial, and Judgment was entred thereon, that the Possession of the Payment of the said, &c. Fish in Question might be establish'd with the said *A. B.* Plaintiff in the said Suit, and that a Decree might be drawn up thereon, &c. And it was thereupon on, &c. ordered and decreed, that, &c. and that your Orator should pay, &c. as by the said Bill, Answer, Pleadings, Orders and Decrees remaining of Record, &c. may more at large appear: Which Decree is since signed and inrolled

inrolled in this Court. *But* your Orator doth aver and say, that he ought not to be bound by the said Decree, nor should any such Decree in Justice have been made or pronounced against your Orator, nor ought the Possession of, &c. to be establish'd with the said *A. B.* neither should your Orator be obliged to pay, &c. as by the said Decree is decreed and appointed; but that the same Decree is manifestly erroneous, and ought to be reversed; and for Error therein doth, according to the Course of this Court, assign the Error therein as followeth, *viz.*

*First,* Your Orator saith, and hopes to maintain, that the Custom and customary Payment for Fish taken at Sea, &c. set forth and pretended by the said *A. B.* in his said Bill, is uncertain, unreasonable, and void both in Law and Equity.

*Secondly,* Your Orator saith, that the Matter directed by this Honourable Court to be tried at the Bar of, &c. by a Jury of *Middlesex* as aforesaid, and the Verdict thereupon, do not ascertain the Court that there is such a Custom as in the said Bill of Complaint is set forth, but only that the then Plaintiff made Proof there; and that by the Order which appointed and directed that Trial, the Point whether *A. B.* then Complainant could prove the pretended Custom was only in Issue, and your Orator could not then offer any Thing by Way of Disproof thereof, or stand upon the Uncertainty, Unreasonableness, or Illegality of the said Custom.

*Thirdly,*

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*Thirdly*, That although your Orator consented to the Trial of the said Issue directed, yet your Orator did never consent, that if the Verdict upon the said Issue should pass against him, the Matter in Question should be decreed against him; but the said Cause stood entire upon the Equity thereof notwithstanding, and the said Issue was collateral and extraneous thereto: And the said Decree it self doth establish with the said *A. B.* the then Plaintiff, or his Assigns, the, &c. Part of the Fish taken by your Orator, or the Value thereof; which is altogether uncertain, whether with the Complainant, or with his Assigns, and whether the Possession is to be of the, &c. Part, or of the Value thereof.

*Fourthly*, That the said *A. B.* was not alive at the Time of the said Decree made against your Orator in the said Cause, and so could not be bound by the said Decree, and consequently your Orator ought not to be bound thereby.

*Fifthly*, That the said Decree contains nothing, &c.

For all which said Errors and Imperfections in the said Decree, your Orator hath brought this his Bill of Review, and humbly conceives that he ought to be relieved therein: *In tender Consideration whereof*, and for that there are divers other apparent Errors and Imperfections in the said Decree and Proceeding, by Reason whereof the same ought to be review'd and reversed, and ought not to bind your Orator, &c. To the End therefore, that the said Decree, and all the Proceedings thereupon, may be review'd and



and revers'd, and the Assigns of the said *A. B.* may answer the Premises, and that your Orator may be relieved in all and singular the said Premises, as in Equity and good Conscience he ought to be, &c. *May it please your Lordship* to grant to your Orator his Majesty's Writ of *Subpœna ad revivend' & respondend'*, directed to *E. F.* and *G. H.* Assigns of the said *A. B.* commanding them, &c.

*If another Bill of Review be brought upon a former Bill of Review, whereupon a Decree was reversed, praying that Reversal may be reversed, and the first Decree stand, &c.* Then say, sheweth, &c. your Orator *C. D.* &c. that, &c. (*setting forth the former Bill as in the decretal Order*) and thereupon the Defendant answered, and the Plaintiff replied, and Witnesses were examined, and their Depositions publish'd, &c. that the Cause came on to Hearing, and was heard and decreed by the Lord Chancellor *C.* after which, &c. petitioned for a Reharing and a Review of the said Cause and Decree to the Lord Chancellor *M.* and the Cause was accordingly re-heard, and a Decree for Reversal of the said Decree was made by his Lordship, (*prout* the Decree) and that Decree is signed and inrolled in this Court: *But* your Orator doth aver and say, that he is aggrieved by the said last Decree, and ought not to be bound thereby, &c. that the said Decree is apparently erroneous and unjust, and contrary to the Precedents of this Court, as well antient as modern, &c. and the now Plaintiff humbly conceives and is advised, that the same ought to be reviewed  
and

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and reversed, and that the first Decree made by the Lord C. ought to stand and be confirmed, and your Orator be paid, &c. *To the End therefore*, that the said last Decree may be reviewed and reversed, and the said Money be paid to your Orator, and that, &c. And that your Orator may be relieved in the Premisses according to Justice, &c. *May it please your Lordship to grant, &c.*

*A Plea and Demurrer to a Bill of Review brought for Reversal of a Decree.*

*The Plea and Demurrer of A. B. Defendant, to the Bill of Review of C. D. Complainant.*

**T**HE said Defendant by Protestation, &c. says, that he is advised by his Counsel, that the said Bill of Complaint is irregular and insufficient, and such whereunto by the Rules and Practice of this Honourable Court he is not compellable to answer, the Scope and Substance thereof appearing to be, that the Defendant did heretofore exhibit a Bill into this Court against, &c. setting forth that, &c. and thereupon, &c. upon which the said Bill of the now Plaintiff is brought, &c. whereunto this Defendant doth demur, and for Cause of Demurrer sheweth, that it doth not appear, as by the Rules of this Court it ought, before the Bill of Review be allowed, that the now Complainant hath obtained any Leave or Licence of this Honourable Court to exhibit his Bill of Review, &c. or that the said Complainant hath

perform'd

perform'd the said Decree made as aforesaid, or any Part thereof, or yielded any Obedience thereunto, either by paying the Money, bringing in the Deeds, &c. Wherefore, for that it doth not appear that the Complainant hath observ'd the Rules of this Court in the Particulars aforesaid; and for that it doth appear of the Complainant's own Shewing, that the said Decree complain'd of by him, was regularly had, and made upon a full Hearing; and that there is no Error in Law set forth in the said Bill of Review, to be appearing in the Body of the said Decree, which is any Way sufficient to induce this Court to reverse the said Decree, &c. and for that of the Complainant's own Shewing it appears, the very same Matters were all fully in Issue in the original Cause, and duly debated and given in Evidence at the Time of the Hearing thereof, when the said Decree was made; and the Complainant, for ought appears by the said Bill, hath not alledged any new Matter at all, which was not in Issue before, to induce this Honourable Court to re-hear the said Cause, save only a Pretence, without any Oath made thereof, (as the Rules of this Court require) that it is lately come to his Knowledge, that, &c. which if admitted to be true, the Complainant's Ignorance thereof is no Ground at all for a Bill of Review, being such an Allegation as may be made in all Cases whatsoever, but is not such new Matter whereof the Complainant could not by any Possibility have had Notice thereof at the Time of the Making of the said Decree, as by the Rules of this

T t

Court



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Court is in that Case provided, &c. And for that there is nothing alledged in the Complainant's Bill, which ought to alter the said Decree in any Particular, but the same Decree, as it was made upon great Deliberation, so it was upon very just and equitable Grounds, notwithstanding any Thing in the said Bill alledged, which tendeth only to bring into Examination the same Things which were heard before, and settled and decreed as aforesaid; therefore and for divers other Imperfections in the said Bill appearing, this Defendant doth demur in Law to the Complainant's said Bill of Review, and humbly prays the Judgment of this Honourable Court, whether he shall be enforced to make any other Answer thereto, or the Complainant be permitted to proceed any further thereupon; and prays to be hence dismiss'd, &c.

Sometimes Bills in *Nature of Bills of Review*, are brought in this Court against Decrees and other Proceedings in *Ireland*, and limited Jurisdictions in *England*: And Decrees of inferior Courts may by Bill here be re-examined and affirmed or reversed, as the Court sees Cause; but such Bills are properly *Bills of Reversal*, and not Bills of Review.

*A Bill*

*A Bill to reverse a Decree of the Court of Chancery of Ireland.*

*To the Right Honourable, &c.*

**H***Um*bly complaining sheweth, &c. your O-  
rator *A. B.* of, &c. in the Kingdom of  
*Ireland*, Esq; That in the Year, &c. your said  
Orator did take up and borrow of *C. D.* of, &c.  
in the said Kingdom, the Sum of 500*l.* of law-  
ful Money of *Great Britain*, and for the secu-  
ring the Repayment of the same with Interest  
after the Rate of, &c. unto the said *C. D.* his  
Executors, Administrators and Assigns, did mort-  
gage to the said *C. D.* certain Lands in, &c.  
and enter into a Statute Staple, &c. (*prout* the  
Deed of Mortgage and Statute) and your Ora-  
tor further sheweth, that the said *C. D.* or some  
in Trust for him received of the Profits of the  
said Lands the Sum of 200*l.* towards Satisfaction  
of the said 500*l.* so taken up and borrowed as  
aforesaid; and afterwards, at such a Time, paid  
the said *C. D.* 70*l.* towards further Satisfaction  
thereof; but your Orator for some Years after  
that not being able to satisfy the Remainder of  
the said 500*l.* was in the Year, &c. by indirect  
Means used by the said *C. D.* compelled to ex-  
ecute a new Deed of Mortgage to him of other  
Lands in the said Kingdom of *Ireland*, for the  
securing of what was due upon the first Mort-  
gage Deed, and the Statute Staple aforesaid, and  
upon no other Consideration whatsoever, where-  
by your Orator became obliged to pay to the

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said *C. D.* within a short Time after, the full Sum of 750*l.* as by the said Deed of Mortgage so extorted from your Orator (and to which your Orator refers) doth appear; and tho' the first Mortgage Deed and Statute were only for Payment of 500*l.* and of which the said *C. D.* had received out of the said Estate 200*l.* and if taken for Interest, as is pretended, was more than 24*l. per Cent.* contrary to all Equity and the known Laws of the Land; and when your Orator had executed the said later Deed of Mortgage to the said *C. D.* he refused to deliver up the first Deed of Mortgage, or to release the said Statute, &c. And further your Orator sheweth, that in Pursuance of the said later Agreement by the second Mortgage Deed so entered into and extorted from your Orator as aforesaid, your Orator did pay or cause to be paid to the said *C. D.* the Sums of, &c. so that by a just Computation the said original Sum of 500*l.* and the legal Interest due for the same, was not only fully paid, but also more than the Sum of, &c. was overpaid; notwithstanding all which, the said *C. D.* still detains the original Mortgage Deed and Statute Staple, and also the later Deed made for the Payment of the said, &c. and refuses to cancel or deliver up the same; by which oppressive and indirect Proceedings, it remains in the Power and at the Pleasure of the said *C. D.* his Executors, &c. at any Time to extend your Orator's Estate by Virtue of the first Deed of Mortgage and Statute Staple, and to compel your Orator, under Pain of losing all Manner of Equity of Redemption, to pay the  
Money



Money engaged to be paid by the last Deed of Mortgage, tho' the full principal Debt and all Interest for the same be in Equity satisfied and paid, and, &c. over and above as aforesaid. And further, the said *C. D.* taking Advantage of your Orator's being beyond the Seas out of the Kingdom, he sued your Orator in the Court of Chancery of *Ireland*, and obtained a Decree *ex parte* against your Orator for the Sum of, &c. without making any Allowance for the said, &c. by Virtue of which said Decree he hath taken Possession of your Orator's whole Estate in that Kingdom, and by the Power of the Sheriffs there turn'd your Orator's Wife and Children out of Doors, compelled your Orator's Tenants to attorn to him, and by that Means received out of your Orator's Estate, &c. Notwithstanding the said Decree is erroneous in the Particulars herein after set forth, *viz.* first, because it was obtained *ex parte*, in the Absence of your Orator when he was at, &c. secondly, because the Account therein mentioned was falsely computed, in that, &c. thirdly, because the said *C. D.* hath not, &c. And your Orator further sheweth, that the said *C. D.* sues the Complainant upon both the said Mortgage Deeds and Statute Staple, and also upon the Bond, &c. whereas the same ought long since to have been delivered up to the Plaintiff to be cancelled; but the said *C. D.* the better to colour his unjust Proceedings against the Plaintiff, gives out that your Orator owned, &c. tho' your Orator avers and hopes to prove that, &c. All which Actings and Doings of the said *C. D.* are contrary to Justice,

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Equity and good Conscience, and tend to your Orator's great Oppression, and the utter Ruin of himself, his Wife and Family. *In tender Consideration* whereof, and forasmuch as, &c. and for that your Orator wholly relies on the Oath and Answer of the said *C. D.* for a full Discovery of the Truth of all and singular the Premises in this Honourable Court, &c. And to the End the said *C. D.* may upon his corporal Oath discover, whether in the Year, &c. your Orator did not mortgage, and for what Sum of Money, the said Lands in, &c. and also, &c. (reciting the Substance of the two Deeds of Mortgage and Statute before set forth, by Way of Interrogatory) and that he may shew Cause if he can, why he should not come to an Account with your Orator for the same, and for all such Sums of Money as from Time to Time he hath received for, or in Trust, or to the Use or on Account of your Orator; and why he should not cancel or deliver up to your Orator the two several Deeds of Mortgage before mentioned, and discharge the said Statute Staple, and acknowledge Satisfaction for the same upon Record; and that he may be compelled so to do by the Decree of this Honourable Court, and may answer all and singular the Premises, &c. and that your Orator may be relieved therein according to Equity and Conscience: *May it please your Lordship* to grant to your Orator his Majesty's most gracious Writ of *Injunction* for Stay of the Defendant's farther Proceedings in *Ireland*, and Writ of *Subpœna* to be directed to the said *C. D.* and others, &c. thereby commanding him and them, &c.

*Of*

*Of Appeals from Decrees of the Chancery, &c. to the Lords in Parliament.*

**T**HERE are two Ways for reversing Decrees, 1<sup>st</sup>, By *Bills of Review* in the same Court, already treated of; and 2<sup>dly</sup>, By *Appeals in Parliament*, which are directed, *To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled*. And tho' when the Decree is to be revers'd by a Bill of Review, the Matter assign'd for Error must appear in the Decree itself; yet when you proceed by Appeal in Parliament, any Matter may be assign'd therein, altho' not appearing in the Decree.

It was antiently held, that where a Man was wrong'd by a Decree made in Chancery, his best and only Way to have Remedy was by Petition to the King; who might refer it to the Judges to give Redress therein, and to none others: And this 'tis said was agreed to by all the Judges, and likewise the Lord Chancellor, in the Countess of *Southampton's Case*. *Roll. Rep.* 331. 3 *Bulst.* 118. But there are few Precedents of this Kind; And it was resolv'd by the Lord Chancellor, Chief Justice, Master of the Rolls, and two Judges, that the King cannot grant a Commission to determine a Matter of Equity; but it ought to be determined in the Chancery, which hath had Jurisdiction Time out of Mind; or by the Parliament. 12 *Co. Rep.* 113.



## 642 *Of Appeals from Decrees,*

That the Lords have Jurisdiction in Appeals is unquestionably admitted; and if either Party thinks himself aggrieved by a Decree of the Court of Chancery, he may by Petition appeal to the Lords in Parliament, and have the Cause reheard there, and they will affirm, alter or reverse the Decree, as they see fit: And this 'tis said may be done either before or after the Decree is executed. These Appeals brought in Parliament, are to be sign'd by two noted Counsels; and can only be argued there by two Counsellors of each Side: And the Appellant is to deposit 20*l.* to recompence the other Party his Costs, in Case he fails in his Appeal, &c.

The Proceedings on Appeals from Decrees are as follows, *viz.* First the Petition or Appeal, lodged with the Clerk of the House of Lords, is offered to the House and read there, whereon the Appellee is ordered by the Lords to have a Copy of the Appeal, and required to put in his Answer thereto on a Day fixed; then it is ordered, when the House will hear the Cause, upon a certain Day following, in the Order as Appeals come in, and Notice is given thereof to the Appellant's Solicitor, who may get a Summons served on the other Side to appear, &c. And then after hearing Counsel on the Appeal, and upon the Answer, on due Consideration thereof, the Lords order and adjudge that the Decree of the Chancery be reversed; or that the Petition and Appeal of the Appellant be dismissed, and the Decree affirmed with Costs, &c. A Majority of the Lords determine the Cause: And upon hearing of the Appeal, if they affirm the Decree,

crec, they send it back to the Chancery; and if they alter or reverse it, they make a new Order or Decree: Sometimes the House of Lords direct an Issue at Law for Trial of some Point necessary for their Lordships better Judgment, &c. and printed Copies of the Appellant's Case are usually delivered to the Lords for their more full Information of the Matter in Controversy.

A Man and his Wife, who was Sister of the Half-Blood to another Person, claim'd an equal Share with others who were Brother and Sister of the whole Blood to the deceased, of his personal Estate; and a Decree in Chancery was obtained in their Favour: On an Appeal brought in the House of Lords, it was insisted for the Appellants, that the half Blood ought to have but a half Share, and that in Cases of Inheritance the whole Blood was preferred; that every Man was by Nature suppos'd to favour his next of Kin, &c. The Counsel on the other Side argued, that the half Blood is as near of Kin to the Intestate as the whole Blood, and ought to have an equal Share; that a Brother of the half Blood was as much a Brother as one of the whole; in the same Relation there can be no Difference of Degree, with respect to personal Estate, &c. and several Precedents were produced; whereupon the Decree was confirm'd. Case of *Watts & al.* against *Crooke*.

Appeal from a Decree of Dismission in the Chancery: The Case was this: A Nobleman made his Will, and devised Lands to another, and his Heirs Male with Remainders over, &c. and afterwards the said Nobleman conveyed the

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the said Estate to other Persons, and their Heirs, by Lease and Release (on a Marriage intended) to the Use of him and his Heirs, with Trusts for his Wife, as to Part, and the rest to be sold for Payment of Debts, Funeral Expences, &c. but died before Marriage, and without Issue; whereupon the now Appellant exhibited a Bill in Chancery to have the Deeds of Lease and Release set aside, and the Will executed; but the Court gave no Relief. It was argued with the Appeal, that the Dismission was erroneous, there being Cause for Relief, for that the Marriage never did take Effect; that the Will was the Result of the Earl's continued Intentions, and the Deeds only the Effect of some sudden Fancy or Passion; that there was a Kindness to the last with the Person in whose Favour the Will was made; and that it was a meer equitable Estate, intended only in Case the Marriage had been consummated, &c. and therefore pray'd, that the Dismission should be reversed. On the other Side it was answered, that the Deed of Release was a Revocation of the Will, and altered the Estate; that both the Will and Deed were voluntary and inconsistent, so that the latter must stand; and tho' it was an equitable Interest, it ought to follow the Rules of Law; that the Release was made for Payment of Debts, as well as in Consideration of Marriage, &c. that there was a manifest Change of Intentions, and there needs no Consideration to warrant the Revocation of a Will, &c. and therefore it was pray'd, that the Decree might  
be



be affirm'd; and it was affirm'd accordingly, *Earl of Lincoln* vers. *Roll*, &c.

And in *Cases in Parliament*, pag. 110, an Appeal was brought from a Decree, which overruled Exceptions taken by the Appellant to a Decree made by the Commissioners for Charitable Uses concerning a Gift by Will; and the same was received, and the Parties ordered to answer thereunto: And it is there *Queried*, whether an Appeal doth not lie to the Lords upon a Sentence by the Delegates, as well as on a Decree in Chancery upon a Decree of Commissioners for Charitable Uses. But we find in *Vernon's Cases* in Chancery, it has been held, that no Appeal lies to the House of Lords from a Sentence by the *Delegates*, nor from a Decree on the Stat. of Charitable Uses; the Acts of Parliament for determining these Matters giving them no Jurisdiction. 2 *Vern. Rep.* 118.

Appeals from Decrees of the Court of Chancery, and some of them reversed, and others affirmed. See *Ca. Parl.* 18, 76, 137, 140, 157, &c. and Appeal from a Decree in the Court of Exchequer, and the Decree affirmed, &c. *Ibid* 192.

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*An Appeal to the Lords in Parliament.*

*C. D. Esq; Appellant, A. B. Gent. Respondent.*

*The Humble Petition and Appeal of C. D. the Appellant.*

*To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.*

*Most humbly sheweth,*

**T**HAT your Petitioner and the said *A. B.* having jointly carried on the Trade of, &c. entered into Articles of Copartnership for the better Management of the same for seven Years, with an equal Stock in the said Trade, and all Things relating to the said Trade were to be done by mutual Consent, and it was agreed that the Appellant should keep, &c. and that the said *A. B.* should keep, &c. and should give and make to the other just and true Accounts thereof, &c. And it was also agreed, that neither Party should take an Apprentice without Consent of the other, nor without good Security for such Apprentice's Honesty; and that all Losses happening to the said Joint Trade, should during the said Term of, &c. Years, be equally born by the said Copartners. And also, that a general Account should once every Year in the Month of *January* be made up; and that if either Party died before the said seven Years expired, the Survivor should take the whole Stock and Estate, and pay the Debts of the said Copart-

Copartnership, and to the Executors, &c. of the deceased, one Moiety of the whole as it should appear on the said Account, &c. and that at the End of the said Term of, &c. there should be an equal Partition made of the whole Stock and Estate, &c. and if they did not agree to continue the said Copartnership for any longer Term, then the said Copartnership should continue three Months and no longer, for the dividing and disposing of their Wares and Merchandizes, and settling their Accounts, &c. which Articles of Copartnership continued in Force till the Day of, &c. in the Year, &c. at which Time a Partition was to have been made, and the Partnership dissolved, and a Writing was prepared for that Purpose; but the Appellant was afterwards prevailed with to continue on the same, by Bond for one Year, &c. and then the Appellant and the said *A. B.* proposed and agreed, that new Articles should be made, by which each Party, their Executors, &c. should have Profit and Loss alike, and that the surviving Partner should not be over-charged, or make good to the Executors, &c. of the deceased, his Share, &c. as by the former Articles was directed, and Instructions were given to prepare such new Articles accordingly; tho' in Regard the Appellant was then going to, &c. and the new Articles not ready, it was agreed that the said Partnership should be continued 'till, &c. by which Time the Appellant might be return'd, and the new Articles finished, which was left to the said *A. B.* to get done, &c. but by Reason of, &c. the said new Articles were delayed,



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delayed, and never executed; and the Partnership being determined on, &c. the Appellant conceived the whole Estate in Trade ought to be divided, and that each Party should have Profit and Loss alike, and was advised he ought not to be charged with the Balance of the last Account, 1500*l.* of the Debts mentioned as good Debts in that Account being really desperate, and made only by the said *A. B.* and also there being Errors and Miscomputations therein to the Amount of 500*l.* that the said *A. B.* exhibited his Bill in Chancery against the Appellant, setting forth the old Articles of Copartnership, and that thereby once in every Year, &c. a general Account should be made up and stated, &c. and that in *January*, in the Year, &c. an Account was so stated, and the said *A. B.*'s Share amounted to 6000*l.* which he prayed to have decreed to him; whereto the Appellant by his Answer set forth the several Matters herein before alledged, and offered an Account of the Trade, and to answer the said *A. B.*'s Share, according to Profit and Loss, the said Articles being determined, and the Debts contracted by the said *A. B.* and reckoned by him as good, proving at that Time to be desperate. In *Michaëlmas* Term 1720. the Cause was heard in Chancery, and it was decreed, that the Account should be taken according to the old Articles, and that the Appellant should make good the 6000*l.* notwithstanding there were such bad Debts; and directed Mr. *L.* to take the Account, and the Appellant to pay Interest according to the Articles. The 10 *February* 1720. the Cause came

to be reheard, and the Court being then apprised of the Case, ordered that the Master should take the Account, as if no Account had been made, and of all such Loss as happened in Trade within the Balance of the said last Account; and after the Report thereof, the Court would give further Directions. *May 21, 1721.* the said *A. B.* obtained a Report *ex parte* from the said Master, who having thereby charged all the bad Debts made by the said *A. B.* on the Appellant, and Interest upon Interest, brought the Appellant indebted to the Estate of the said *A. B.* above the Sum of, &c. On *July 5, 1721.* the said Master, on hearing all the Parties, according to the Order of, &c. certified, that the said Copartnership determined on, &c. before which Time a general Account of all Manner of Dealings in Copartnership was made and stated the Day of, &c. and after a due Discount made of the Errors, bad Debts, and Payments made by the Appellant, there was but the Sum of, &c. due to the said *A. B.* which the Appellant submitted to pay. *December 1, 1721.* the Cause coming again to be heard, the Court continued in their first Opinion, and confirmed the Order of, &c. and discharged both the said Reports. Now inasmuch as the Decree of the said Court of Chancery being grounded upon a Supposition that the said Copartnership was in Being, and continued 'till, &c. and that the Joint Trade was carried on thereupon, the Appellant is thereby damnified about 2000*l.* and is advised, that the said Decree is unjust, and ought to be reversed, it appearing on the Foot  
of

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of the old Articles of Copartnership, and by the Accounts and Reports in Chancery, that the said Copartnership was fully determined on the Day, &c. and that by the true Intent of the said Articles, an equal Division of the Stock and Debts, as well sperate as desperate, was to be made at the End of three Months after the Term of Seven Years, &c. And your Petitioner is advised, that the said Decree is also unjust, being to make good not only the bad Debts contracted by the said *A. B.* but likewise all such Losses as happened to the Copartnership by reason of ill Servants taken by the said *A. B.* who took one *L. W.* a Servant, without Security, and he after, &c. defrauded the Partnership of at least 400*l.* whereby the Appellant is dammified one Moiety of that Sum, &c. And also the said Appellant is by the said Decree ordered to pay Interest for the whole Money, when it was an Account current, and it is proved that he kept the Money dead, and always in his Hands, &c. *And therefore* your Petitioner the said Appellant humbly appeals from the said Decree in Chancery to this Honourable House, and hopes that the same shall be reversed and set aside, and particularly that he shall not be charged or compelled to make good the said *A. B.*'s Share of bad Debts, &c. according as the same was computed in the last Account; and that an equal Division ought to be made of the whole, and each to have Profit and Loss alike, which the Appellant submits to make good, &c. and humbly hopes your Lordships will be pleased to order *Summons* to the said *A. B.* to appear before



before your Lordships, and answer all and singular the Premises by a Day for that Purpose to be appointed by this Honourable House; and that in the mean Time, and until your Lordship's further Order, all Proceedings on the said Decree or decretal Order may be stayed, &c.—On an Appeal from a Decree of Dismissal say, after Recital of the Proceedings in Chancery to the Hearing; and that his Lordship ordered the Petitioner's Bill should stand dismissed without any Relief, which said Order or Decree for Dismissal is since inrolled, &c. whereby your Petitioner hath apparent Damage, contrary to all Equity, as your Petitioner is advised; your Petitioner therefore appeals from the said Order and Inrollment, and Proceedings in the said Court of Chancery, for Dismissal of your Petitioner's said Bill, to your Lordships in Parliament, and most humbly prays, that the said Defendant may be appointed a short Day, to answer all and singular the Premises before your Lordships in this Honourable House, and that the same Order or Decree of Dismissal may be set aside, and the Matters of your Petitioner's said Bill may be decreed to your Petitioner, or such other Relief given therein, as to this noble and Honourable House shall seem meet.

*And your Petitioner shall ever Pray, &c.*

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*The Answer to the foregoing Appeal.*

C. D. Appellant, A. B. Respondent.

*The humble Answer of A. B. the Respondent, to the Petition and Appeal of C. D. Appellant, against a Decree made in the Court of Chancery.*

**T**HIS Respondent saith, that on, &c. in the Year, &c. the Appellant and this Respondent entered into Articles of Copartnership for carrying on the Trade of, &c. for the Term of Seven Years, &c. and that, &c. (*here set forth the whole Substance of the Articles*) And this Respondent doth deny, that at the End of the said Seven Years any Partition was intended to be made, or the said Partnership dissolved; but on the Contrary the said Parties were so far from breaking off the said Partnership, that by their mutual Consent they did the Day and Year &c. enter into, each to the other, several Bonds of the Penalty of, &c. the Condition thereof reciting, that the said Seven Years being expired, they had agreed to continue the said Copartnership until, &c. following, under the same Conditions, Covenants and Agreements, as were contained in the said Articles of Copartnership. And this Respondent saith, that they the said Copartners did accordingly continue the said Copartnership, under the same Covenants and Agreements as in the said Articles, until the said &c. and after; and that on, &c. they did make  
and

and state an Account of the said Copartnership, according to the said Covenants and Agreements, by which Account it doth appear, and so the Appellant hath acknowledged under his Hand, that this Respondent had then in Stock, good Debts, Money and Wares, to the Value of 6000*l*. and the said Copartners being minded to continue on the said Copartnership, under the same Agreements and Covenants, did on the Day, &c. in the Year, &c. again enter into new Bonds to each other, of the Penalty of, &c. the Condition thereof reciting the said Articles of Copartnership and last mentioned Bonds, and further, that the said Copartners had agreed to continue the said Copartnership for a longer Time, but by Reason the Appellant was to go to, &c. and the Articles could not be made ready to execute before the said Journey, if therefore they should continue and keep their said Copartnership until, &c. then next, under the same Conditions and Covenants as in the said Articles of Copartnership, then the said Bonds to be void, &c. And this Respondent denies, that, &c. and that thereupon it was agreed new Articles of Copartnership should be made, whereby each Party should have Profit and Loss alike, &c. (as in the Appeal) but saith, that they the said Copartners did continue the said Trade in Copartnership, under the Covenants and Agreements in the first Articles of Copartnership, until &c. And it doth plainly appear by the Proofs in the Cause, that the Copartners did this in Order to continue the said Partnership for a further Term of Seven Years, upon the Covenants



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and Agreements in the said Articles. And this Respondent further saith, that he having required of the Appellant to pay to this Respondent the Balance of the said last stated Account with Interest from the Time the same should have been paid, and he refusing to do it, this Respondent was constrained to exhibit his Bill in the Court of Chancery, to compel the Appellant to pay this Respondent the same; to which Bill the said Appellant put in his Answer, and Witnesses were examined, and on the Day of, &c. in the Year of, &c. the said Cause came on to be heard in the said Court, and it was by the said Court decreed, that the Account stated on, &c. should stand, &c. *(and so set out the Proceedings before a Master subsequent thereto, briefly taking Notice of whatever is therein of any material Advantage to the Respondent)* and that the Master having been attended by all Persons concerned, did the Day of, &c. last make his Report, according to the Direction of the said decretal Order of, &c. and thereby certified, that there doth remain due to this Respondent the Sum of, &c. over and above all Payments made by the said Appellant, which said Report is by a further Order of the said Court of Chancery confirmed, &c. And this Respondent saith, that the said Decree, from which the said Appellant hath appealed, is (as this Respondent is advised) just and equitable, and well warranted by the Rules of Equity; and therefore hopes this most Honourable House will find no Cause to alter, but will confirm and enforce the same, and this Respondent humbly

bly prays, that the said Petition of Appeal, which doth not truly nor fully state the Fact, as it appears by the Articles and Proofs, may be dismissed with exemplary Costs.

Appeals to the Lords *here from Decrees in the Chancery of Ireland.*

THE Case of the Governor and Society of *Ulster*, against the Bishop of *Derry*, in *Ireland*, is reported as follows: The Bishop had appealed to the House of Lords of *Ireland*, from an Order or Decree of the Court of Chancery there, touching certain Lands in the County and Liberty of *London-Derry*; and the Governor, &c. thereupon appealed to the House of Lords here, and in the Appeal (after a Recital of the Proceedings there, and the Merits of the Cause) set forth,

'That the Appellants were advised no Appeal lay to the House of Lords in *Ireland*, from the Court of Chancery there; but that all Appeals from thence ought to be immediately to the Lords in *England*, being the supreme Judicature as well for Matters arising in *Ireland*, as in this Kingdom, &c. And therefore pray'd, that an Order might be made for the said Bishop to appeal and put in his Answer thereto; and that the Matter might be heard before their Lordships here, and the Petitioners might receive such Relief as should be agreeable to their Lordships great Wisdom and Justice, &c.'

## 656 *Of Appeals from Decrees, &c.*

And after hearing Counsel touching the Point of Jurisdiction in this Case, it was ordered and adjudged by the Lords *here*, that the said Appeal of the Bishop of *Derry* to the House of Lords of *Ireland*, from the Decree of the Court of Chancery there, was *coram non judice*, and all the Proceedings thereupon were null and void; and that the Court of Chancery in *Ireland* ought to proceed in the said Cause, as if no such Appeal had been to the House of Lords *there*: And if either of the Parties did find themselves aggrieved by the said Decree of the Chancery of *Ireland*, they were at Liberty to pursue their proper Remedy, by Way of *Appeal to this House*. Ca. Parl. 78.

This seems to be one of the first Cases and Determinations against the Judicature of the *Irish House of Lords*, which is now taken away by Statute; for by Stat. 6 Geo. 1. c. 5. It is declared and enacted that the House of Lords in *Ireland* shall have no Jurisdiction to reverse Judgments or Decrees given in the Courts of that Kingdom; and that the Parliament of *England*, hath Authority over *Ireland*, &c.



Of Injunctions, Certiorari Bills, Pro-  
cedendo's, &c. *And of Writs Ne*  
*exeat Regnum, Habeas Corpus's,*  
*and other Writs; Attachments, and*  
*other Procefs, &c. alfo of Commif-*  
*sions of Bankrupt; and Bills to fore-*  
*close Equity on Mortgages, &c.*

*Injunctions in Chancery, and Bills for that*  
*Purpose.*

IN the Court of Chancery, a Bill may be  
brought praying an Injunction, either to stay  
Proceedings at Law, or to stay Waste, &c. If  
it be the former, the Complainant therein usu-  
ally suggests some rigorous Proceedings at Law,  
begun or threatned by the Defendant; and that  
by the strict Rules of the Common Law, or  
for Want of Witnesses or other Cause, he is  
without Redress therein, &c. And if it be to  
stay Waste, *Affidavit* must be made, that some  
Waste or Spoil is done, or threaten'd to be made  
in the Land, Houses, &c. wherein the Com-  
plainant claims a Right or Interest, or for which  
he sues, &c. And by the Exception in the Stat.  
4 & 5 *Ann.* for Amendment of the Law, *Sub-*  
*pæna's* or other Procefs for Appearance upon  
these Bills, may be issued and served before the  
Bill is filed: But if a *Subpæna* returnable *im-*  
*mediate* issue in an Injunction Cause, the Bill

## 658 *Of Injunctions in the Chancery.*

must be filed by the first Costs-Day in the subsequent Term.

An Injunction is granted in divers Cases; and it is generally grounded upon an interlocutory Order of the *Chancery* or *Exchequer*, to stay Proceedings in Courts at Law. It is a *Writ remedial*, issuing out of the Chancery upon a Petition or Bill exhibited; and, according to the Prayer of the Bill, may be granted to stay a Suit in some other Court, as in a Court of Law, Court of Admiralty, Ecclesiastical Court, or inferior Court of Equity; or to restrain one from doing a sudden Waste or Damage to the Freehold or Inheritance of another, by felling Timber, &c. or it may be to yield up, quiet, or continue the Possession of Lands, &c. which last Sort of Injunction is a *judicial Writ* subsequent to the Decree, being in Nature of a Writ of Execution, or *Habere facias Possessionem*; but sometimes Injunctions are granted to quiet Possession before Hearing the Cause, to the Party having the same.

When an Injunction is granted to stay Proceedings at Law, if the Cause be at Issue, or a Declaration delivered, commonly it gives Leave to go to Trial, &c. but stays Execution. And in some Cases, where the Matter at Law is tried, it bars from Judgment; also sometimes where a Judgment is executed, it will stay the Money in the Sheriff's Hands. Where it is to stay Suits in other Courts, 'tis usually prayed and granted on some Matter of Equity suggested in the Bill; as that the Complainant is not able (for certain Reasons therein shewn) to  
make

## Of Injunctions in the Chancery. 659

make his Defence in the other Court, tho' he has good Matter to discharge him here; or that he is sued at Law for a Penalty, which in Equity he ought not to pay; or for that the other Court has not Jurisdiction of the Cause, *i. e.* where a Spiritual Court holds Plea of Temporal Matters, &c. or that the other Court refuses him some rightful Advantage; acts erroneously or unjustly; or hath not Power to do him Right; and that if the Rigour of the Law takes Place, it is against Equity and good Conscience, &c. And it may be obtained by Order, on Matter confessed in the Defendant's Answer; or upon some Matter of Record, or on some Deed, Writing, or other Evidence shewn in Court, whereby it appears there is a Probability that the Party ought to be discharged in Equity, altho' not elsewhere, &c.

If many Actions at Law are brought by the same Plaintiff, against the same Defendant, for the same Cause, this being in Nature of Barretry, the Court of Chancery will grant an Injunction to stay the Proceedings in all of them but one. The Lord of a Manor brought an Ejectment at Law against his customary Tenants, upon Pretence of Forfeiture of their Estates; upon which the Tenants exhibited a Bill here, praying he might shew what Breaches of the Custom he design'd to insist upon at the Trial, &c. and he being in Contempt, the Court, without entering into the Merits, ordered an Injunction. A Person went over the Defendant's Ground into his House to serve him with a *Subpoena* of this Court, for which the Defendant brought



## 660 *Of Injunctions in the Chancery.*

brought an Action at Law, *Quare Domum & Clausum fregit*; and on Motion here the Action of Trespass was stay'd by Injunction. There being a Prosecution at Law for Perjury in this Court, the Court granted an Injunction; the Cause here not being yet heard. And this Process is said to have been heretofore frequently granted to stay Suits upon the Stat. 2 *Ed.* 6. c. 13. for treble Damages for not setting out Tithes; and the Party sent to the Ecclesiastical Court. If a privileged Person of this Court is sued elsewhere at Law, he may stay the Suit by Injunction, &c.

If Money be recovered at Law, and the Defendant bring his Bill to be relieved here, on Condition of paying the Money and Costs at Law into Court, subject to the Order on Hearing; this Court will order an Injunction, and in the mean while stay Execution, and give some Time for paying in the Money; with this further, that the Defendant here, who was Plaintiff at Law, be at Liberty to affirm his Judgment if a Writ of Error be pending, &c. A Defendant here had Judgment at Law, the Complainant brought a Writ of Error, and then brings his Bill here, and has an Injunction: The Defendant being in no Contempt, but having taken a *Dedimus*, prays Leave to affirm his Judgment; and it was granted him, but he to proceed no further 'till further Order. If there be a Verdict at Law, and the Defendant exhibits his Bill for Relief here, the Money recovered must be deposited in Court, before an Injunction will be granted; unless it be where special Mat-  
ter

## Of Injunctions in the Chancery. 661

ter of Equity appears by the Answer, or some former Decree, &c. And where the Defendant by his Answer swears a certain Sum of Money due to him, the Court will often not grant an Injunction, except the Plaintiff bring the Money into Court: But if by the Answer it appears to be Matter of Account that is in Question, and the Demand is very uncertain; the Court will commonly grant or continue an Injunction. *Carry's Rep.*

The Court would not continue an Injunction upon a Bill to be relieved against the Penalty of a Bond prosecuted at Law, unless the Money sworn by the Answer to be due thereupon were brought into Court; or the Complainant gave a Judgment at Law for the same, and a Release of Errors: And if he had not been thought of sufficient Ability, the Court would have suffered the Plaintiff at Law to have proceeded there as far as the Return of a second *Scire facias*, so as to make the Bail liable. *A. B.* by Obligation was bound to *C. D.* for Payment of 100*l.* and indebted to him for Rent 100*l.* An Action was brought at Law on the Bond, and Judgment had on the Bail-Bond: On this the Complainants pray to be relieved against the Bond, Judgment, &c. and had an Injunction; and the Defendant by Answer owns the 100*l.* on the Bond satisfied; the Court ordered the Defendant at Law should give a Release of Errors, and the Injunction to stand as to that, but to be dissolved as to the Rent. A Surety in a Bond prosecuted on a Counter-Bond for Money he had paid, &c. The Defendant files his Bill here, and has an Injunction;

## 662 *Of Injunctions in the Chancery.*

junction; and the Court ordered the Money sworn due on the original Bond, to be paid to the Defendant here in a Month, subject to the Direction of the Court upon Hearing, or else the Injunction to stand dissolved.

If the Defendant be in Contempt, the Court will grant an Injunction without bringing the Money into Court, tho' there have been Proceedings at Law: And so if Matter be confessed in the Answer sufficient for a total Relief. And tho' an Affidavit is not ordinarily to be made use of against an Answer; yet where an Executor by his Answer, swore a certain Sum due, the Court on Affidavits of Strangers to the Suit continued the Injunction, without ordering the Money to be brought into Court, because there appeared Reason to doubt whether it were due; and the Executor is not privy to the Transactions of the Testator: And it was said so it would have been, if by Writing, or any other Matter shewed to the Court, it might seem doubtful whether the Money were paid. Exceptions alone to an Answer are not sufficient Cause for granting an Injunction, being often put in for Delay; but there must be also a Report of the Answer's Insufficiency: But where an Injunction is already granted, it may be continued on Exceptions; and if Exceptions come in only the Night before the Motion, the Court will refuse to dissolve the Injunction. If a Report is not procured upon Exceptions in a reasonable Time; or if the Answer be reported sufficient, &c. the Injunction will, upon Motion, be ordered to be dissolv'd, *Nisi Causa*, &c.

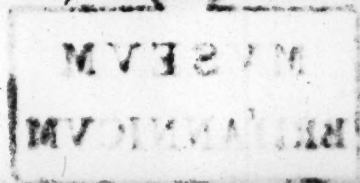
An



## Of Injunctions in the Chancery. 663

An Injunction granted *before Answer* is generally *until Answer and further Order*; and in such Case, after the Answer is come in, if the Counsel for the Defendant alledge, 'That the Defendant has answered and denied the whole Equity of the Plaintiff's Bill, (his Contempts, if any, being cleared, and his Appearance entered) and also produce a Certificate from the Six Clerk of the Answer's being filed 14 Days, the Court will order the Injunction to stand dissolved *Nisi Causa* at a short Day, and perhaps without such Certificate; and if at the Day no Cause be shewn, then on Motion and Affidavit of due Service of the Order, the Order will be made absolute: And if in 'Term-time, and a Roll-Day, it is usually moved to be confirmed at the Rolls, in the Evening after the Rising of the Court at *Westminster*. But if the Appearance be not entered, and Contempts cleared, or if the Answer be not filed 14 Days, and all Equity denied; or if Exceptions to the Answer are put in, and the Answer is reported insufficient, any of these will be good Causes against dissolving the Injunction.

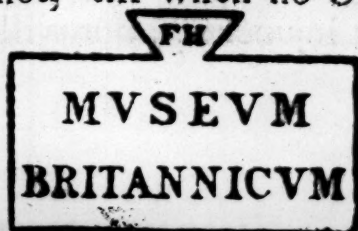
Where there are cross Bills, it has been held, if after the first Bill is answered, the Plaintiff in such first Bill do not answer the second Bill in 8 Days, the Injunction shall be dissolv'd, &c. But if there be two Defendants in a Cause, the Court will not ordinarily dissolve the Injunction, 'till both have answered. Also where there is an Appearance of Equity with the Complainant, or that his Case seems hard, the Court will not easily dissolve an Injunction; nor will they commonly



## 664 *Of Injunctions in the Chancery.*

monly dissolve it the last Seal after Term; or is it ever dissolv'd, without Motion on the adverse Part. As Injunctions may be granted on Motion, so are they dissolved: And by the Orders of the Court of Chancery, no Injunction for Stay of Suits at Law, shall be granted, revived, or dissolved upon a Petition, nor any Injunction of any other Nature pass by Order upon a Petition, without Notice and a Copy of the Petition first given to the other Side; and the Petition is to be filed with the Register, and the Order entered. And Injunctions ought to be *inrolled*; or the Transcripts thereof filed. *Ord. Canc. 151.*

A Defendant's Plea being allowed, he moved to dissolve the Injunction, and the Court said, when the Plea is allowed there is generally an End of the Injunction, but not always; for the Defendant may plead only what the Plaintiff hath confessed, &c. and tho' there be Notice of the Motion, yet an Injunction is not to be absolutely dissolved upon Allowance of the Plea, because there may be some Equity shewn for continuing it. On a Plea or Demurrer's being allowed, the Injunction that was granted till Answer, &c. will be dissolv'd on Motion: But the Court in such Case, or on coming in of the Answer, will not dissolve it on the first Motion, but only *Nisi*, &c. The Court refused to grant an Injunction while a Demurrer was depending; for 'till the Demurrer be argued, it doth not appear whether the Court hath Cognisance of the Cause, or not, 'till when no Order ought to be made.



## Of Injunctions in the Chancery. 665

If an Injunction is granted upon the Merits of the Cause, or on some special Cause of Equity, it is commonly to *stand 'till Hearing*; unless the Plaintiff delay his Suit. A Delay of Proceedings here, if for any unreasonable Time, is a good Cause for Dissolving an Injunction for staying Proceedings at Law; and yet sometimes the Court will receive the same, tho' dissolved, where Equity is evidently on the Complainant's Side, &c. for altho' an Injunction be dissolv'd, it may be revived, on Motion and Cause shewn to the Court.

*Injunctions to stay Waste*, had upon a Bill filed, &c. are granted for Persons in Reversion or Remainder, against Tenants for Life, or other particular Tenants, to restrain Waste in Houses; Woods or Timber; or to prevent the Ploughing of antient Meadow, not ploughed up 20 Years before; or for the Preservation or Maintenance of Inclosures of 20 Years standing, or more; or to hinder the Doing any other Waste or Spoil in Lands, &c. and Injunctions against selling of Timber, or ploughing of antient Pastures, &c. shall be granted as the Circumstances of the Case require: But not where the Defendant claims by his Answer any Estate of Inheritance; and if the Defendant shew that he has an Estate without Impeachment of Waste, it is ordinarily good Cause to prevent or dissolve the Injunction. 1 *Chan. Rep.* 242.

Yet it is said, this Writ is sometimes granted to stay Waste even against him, that may by Law or Provision of the Parties do it, where the Doing thereof seems malicious, and against the publick



## 666 *Of Injunctions in the Chancery.*

publick Good; as cutting young Timber, prostrating Houses, or the like. So in the Case of Hospital Lands, the Court partly from the Defendant's own Confession, and partly because the Complainant seem'd not to design to renew to the present Tenant, (the Defendant) when his Lease was out, and being well satisfied there was Danger Waste would be done, they granted a Writ of Injunction, and that without Affidavit of Waste committed or threatned, &c. This Writ was prayed to restrain a Tenant for Years from doing Waste in a Warren, upon Affidavit of great Numbers of Conies destroyed, at unreasonable Times; it was also alledged, that he cut Timber-Trees, &c. The Court was at first against it, but it being urged that it was a very considerable Warren, and the Lessee's Term near at an End, it was granted: Waste cannot ordinarily be committed on Commons or Waste Grounds.

A Bill being taken *pro Confesso*, by Reason of the Defendant's Contempt in standing out all Process, if the Bill prays an Injunction to quiet Possession, or to stay the Defendant's Proceedings at Law, the Court will decree a *perpetual Injunction*. It hath been said, that this perpetual Injunction is not to be granted, but where there has been a long and uninterrupted Possession: But it is also granted upon a Decree made; or when there have been Trials at Law, and Verdicts for one Party, or in the Cause, &c.

The Writ of Injunction for quieting Possession of Lands, may be had where the Possession has continued in the Plaintiff, for three Years before

## *Of Injunctions in the Chancery.* 667

the Exhibiting of the Bill, upon some good Title; and not upon any Title at Will, &c. of which the Court is to be satisfied by Oath: And the Plaintiff must also have such Possession or Title continuing in him at the Time of the Motion; the Injunction being to be given only for such Possession as he then hath. But a Defendant was in Possession at the Time of the Bill exhibited, and the Plaintiff afterwards entered; an Injunction was granted against the Plaintiff to avoid the Possession. And in another like Case, the Defendant pray'd he might have an Injunction, or that the Bill might be dismissed; and the Court held it reasonable that he should have one or the other. 1 *Chan. Cas.*

This Sort of Injunction for Possession, before Hearing, 'tis said, hinders not the Defendant's Suit at Law, making a Lease, taking a Distress, &c. and it may be dissolved on Cause shewn, as Injunctions in other Cases.

Sometimes pending the Suit, the Court will order a Party the Possession by Injunction; or that the Rents not already paid shall be stay'd in the Tenant's Hands 'till Hearing, and sometimes will order both: At other Times, it will order a Receiver, who shall take the Rents and Profits, and pay them into Court, or account for them, when the Court shall require; and he to enter into such Recognizance as the Court directs, to secure his Doing thereof.

A Defendant being considerably indebted to the Complainant's Testator, disbursed Money for his Funeral at the Executor's Request, for which he brought an Action at Law against the

## 668 *Of Injunctions in the Chancery.*

Executor, who exhibited his Bill here, praying an Account and Stay of the Proceedings at Law, and had an Injunction; which the Defendant pray'd might be dissolv'd, at least as to what related to the Money so by him disburs'd; but the Court said, it was to be suppos'd he design'd to have it allow'd in the Account when he disburs'd it, and so he should, and therefore the Injunction was continued. *Cary's Rep.*

The Administrator of a Sailor ordered *A. B.* to receive Money due to him, who accordingly did receive it, and put it into a Goldsmith's Hands: Then a Will is produc'd, of which and the Probate the Executor gives *A. B.* Notice, before the Money was paid to the Administrator, &c. But he refused to pay the Money to the Executor, who thereupon sues him at Law: He brings his Bill, and the Executor in his Answer swears Notice as aforesaid, and the Court ordered the Money to be brought into Court, or the Injunction to be dissolved. The Legatees sue in the Ecclesiastical Court, that the Executor might prove the Will, and pay their Legacies; and the Executor exhibits a Bill to prove the Will here, it being of Lands as well as personal Estate, and to stay Proceedings in the Ecclesiastical Court, and offered by his Bill to pay the Legatees, if there were Assets: On which the Court ordered an Injunction, and that it should continue; the Executors giving Security here to perform the Will, and for speeding the Cause.

An Injunction Writ is served by shewing it under Seal, and Delivery of a Copy thereof to the Party; which Service must be personal on the Party



## Of Injunctions in the Chancery. 669

Party himself, his Counsel, Attorney, Solicitor, &c. or such of them as can be found, as the Case requires: But it hath been held, that the Leaving it with the Attorney or Solicitor's Clerk or Servant, is good Service. Where an Injunction is disobey'd, on Oath thereof Process of Contempt shall issue against the Party as in other Cases, 'till he yield Obedience; nor is he to be heard in the principal Case, 'till he hath yielded Obedience thereto: And if an Attorney proceeds at Law, after he is served with an Injunction to stay Proceedings, on *Affidavit* made of it, Interrogatories are to be exhibited against him, to which he must answer on Oath; and if it appears that he was duly served with the Injunction, and hath proceeded afterwards contrary thereto, the Court of Chancery will commit the Attorney to the *Fleet Prison*, &c.

The Writ of Injunction is directed to the *Party* proceeding, *ac omnibus & singulis Consiliar. Attorn. sollicitat. suis quibuscunque*, &c.

*A Bill for an Injunction, &c. in Chancery.*

To the Right Honourable, &c.

**H**umbly Complaining sheweth unto your Lordship, your Orator *A. B.* of, &c. That whereas *C. D.* by Confederacy with, &c. did on, &c. and by the like Confederacy the said *C. D.* did in *Trinity-Term* last, bring an Action of Debt for 40*l.* against your Orator in his Majesty's Court of *Common Pleas*, and hath since arrested your Orator, and held him to spe-

## 670 *Of Injunctions in the Chancery.*

cial Bail thereupon, by Virtue of a Writ of *Capias* returnable, &c. and the said *C. D.* still prosecuting the said Action against your Orator for Recovery of what he hath justly paid, &c. and tho' the Matter or Cause, for which the said Action is brought, is now depending before your Lordship in this Honourable Court, and properly relievable therein, and the said *C. D.* doth well know that much more is due to your Orator from the said *C. D.* than, &c. the Bill of your Orator amounting in the Whole to above the Sum of, &c. of which he hath only received, &c. all which Actings and Doings of the said *C. D.* and the rest of the Confederates, are contrary to Equity and good Conscience, and tend to the manifest Injury and Oppression of your Orator. *To the End therefore* that the said *C. D.* &c. may, on their Oaths in this Court, full and perfect Answer make to all and singular the Matters and Things herein before contained, and that the said *C. D.* may upon his Oath discover whether he did not, on or about, &c. and that the said *C. D.* may come to an Account with your Orator, and pay to your Orator what shall appear to be justly due to him, &c. and that the Proceedings at Law of the said *C. D.* on the Action aforesaid may be stayed till the Hearing of this Cause in this Honourable Court, and your Orator may be relieved in all and singular the Premises, &c. *May it please your Lordship* to grant to your Orator his Majesty's Writ of *Subpoena* directed to the said *C. D.* &c. thereby commanding him and them on a certain Day to appear and answer,

*Of Injunctions in the Chancery.* 671

swer, &c. and also to grant to your Orator his Majesty's most gracious Writ of *Injunction*, to be directed to the said *C. D.* and all and every his Counsellors, Attornies, Solicitors and Agents, commanding them and every of them, under a certain Pain therein to be expressed, That no further Proceedings be had in the said Action brought by the said *C. D.* against your Orator in the said Court of, &c. until the Hearing of this Cause before your Lordship in this Honourable Court, or 'till your Lordship shall have given further Orders and Directions therein; and that the said *C. D.* &c. may stand to and abide such Order and Decree as your Lordship shall think fit to make for your Orator's Relief in the Premisses aforesaid.

*And your Orator shall ever pray, &c.*

Or if the *Injunction* be pray'd to *stay Waste*, &c. then say, and that the said *C. D.* may be stayed by the *Injunction* of this Honourable Court from cutting and felling of Timber-Trees, and making any Manner of *Waste*, Spoil or Destruction in and upon the said Premisses; and that your Orator may have the *Possession* thereof, &c.

*An Order of Court for an Injunction.*

Die & Anno, &c. Inter *A. B.* Quer. *C. D.* Def.

**F**Orasmuch as this Court was this Day inform'd by Mr. *L.* being of Counsel for the Plaintiff, That the Plaintiff hath exhibited



## 672 *Of Injunctions in the Chancery.*

his Bill for Relief against the Defendant in this Court; and the Defendant being served with Process hath not answered thereto; it was therefore prayed, That an Injunction be awarded for Stay of the Defendant's Proceedings at Law against the Plaintiff; which is ordered accordingly, until the Defendant shall appear and answer the Plaintiff's Bill, and other Order to the contrary: If Issue is joined at Law, the Defendant is at Liberty to proceed to Trial at next Assises, &c. but Judgment and Execution are stayed.

*Order for continuing of an Injunction, upon bringing Money into Court.*

**W**Hereas by an Order of the Day, &c. last, it was ordered that the Injunction in this Cause should stand dissolved, unless Cause were this Day shewn to the contrary: Now upon opening of the Matter this present Day unto this Court by Mr. T. being of the Plaintiff's Counsel, in the Presence of Mr. L. the Defendant's Counsel, the Plaintiff's Counsel moved and offered divers Reasons for the Continuance of the Injunction in this Cause; whereupon, and upon Hearing of the Counsel for the Defendant, it is ordered that the Plaintiff do by, &c. next, bring into this Court the Sum of, &c. and thereupon the Injunction in this Cause is continued 'till the Hearing: But in Default thereof, the said Injunction is from thenceforth absolutely dissolved, which in the mean Time is hereby continued.

*An*

## *Of Injunctions in the Chancery.* 673

*An Order that an Injunction for staying Proceedings at Law shall stand dissolved, &c.*

**W**Hereas the Plaintiff obtained an Injunction for Stay of the Defendant's Proceedings at Law, until Answer and further Order; and on opening of the Matter this Day unto this Court by Mr. L. being of the Defendant's Counsel, it was alledged that the Defendant hath since put in a full and perfect Answer to the Plaintiff's Bill, and thereby denied the whole Equity thereof: It was therefore pray'd, that the said Injunction may stand absolutely dissolved; which is ordered accordingly, unless the Plaintiff on Notice to his Clerk in Court, shall on the last Day of this Term shew unto this Court good Cause to the contrary.

*A Writ of Injunction to stay Proceedings at Common Law.*

**G**Eorgius, &c. C. D. ac omnibus & singulis Consiliar. Attorn. & Sollicitat. suis quibuscunque & eorum cuilibet salutem. Ostens. est nobis in Curia Cancellar. nostr. ex parte A. B. Quer. quod cum ipse Quer. per quandam Quere-mon. suam coram nobis in Curia nostra præd. versus te præfat. C. D. nuper exhibit. relevium sibi petivit adhiberi de & concernen. Materiis in ead. content. Ac tu præfat. Defend. cum brevi nostro de Subpœna debit. inservit. existen. nondum comperuisti sed in Contempt. dict. Curie sistis velut per Sacrament. satis fide dignum apparet;

X x 4

unde

## 674 *Of Injunctions in the Chancery.*

*unde versus te emanat. est breve nostrum de Attach. Interim ver. sectam ad Communem Legem pro Materiis prædict. prosequeris minus iuste ut accepimus, Nos ad hæc Considerationem habentes tibi igitur præfat. C. D. ac vobis præfat. Consiliar. Attornat. & Solicitatoribus tuis & vestrum cuilibet sub pœna ducent. librar. de Terris Bonis & Catallis vestris & cujuslibet vestrum ad opus nostrum levand. firmit. Injungend. præcipimus quod ab omni ulteriori prosecutione quacunque ad Communem Legem de pro vel concernen. aliquib. materiis in Queremon. prædict. content. & specificat. desistatis & quilibet vestrum desistat donec & quousque Tu præfat. Defend. Queremon. præd. directe & perfecte Responderis & pro Contempt. tuo satisfeceris dictaq; Cur. nostr. aliter Ordinaverit in hac parte, Et hoc sub pœna prædict., &c.*

*Claufe in such an Injunction to stay Judgment and Execution at Law.*

**S***ED si Exitus in Causa ad Com. Legem pro Materiis prædict. junct. sit tunc ad Triacon. ad Com. Leg. procedere valeatis aliquo in presentibus in contrarium non obstante Judicium tamen vel Execucon. Judic. super veredicto aliquo per vos obtinend. petere postulare vel impetrare desistas & quilibet vestrum desistat, Et hoc, &c.*

*An Injunction upon depositing Money in Court.*

**G***Eorgius, &c. T. D. ac Consiliar. Attorn., &c. Ostens. erat nob. in Cur. Canc. nostr. Die, &c. ex parte A. B. Quer. vers. te præfat.*  
T. D.



## Of Injunctions in the Chancery. 675

T. D. Def. quod tu præfat. Def. verediçt. obtinuiſti ad Com. Legem verſus præfat. Quer. pro Cent. librar. ac, &c. Cuſt. Quas ipſe Quer. in manus tuas ſolvere volebat ita ut Breve de Injunctione emanaret ad retardand. proſecution. ſuper verediçt. Quas cum Conſiliar. tui præfat, &c. accepiſſent tunc Ordinat. erat ſuper ſolucon. dictar. pecuniar. & Cuſtag. prædict. ad diem in ea parte limitat. dict. Breve de Injunction. emanaret, Jam quia dictus Quer. ſecundum directionem Ordin. præd. in Cur. protulit prædict. ſummam Centum libr. cum Cuſtag. præd. velut ex Certificatione Haſtiarii dict. Cur. noſtr. plenius liquet, Nos ad hæc Conſideracon. habentes ſp̄ialem tibi igitur præfat. T. C. ac vob. præfat. Conſil. Attorn. Agent. & Sol. præd. & cuilibet veſtr. ſub pœna ducentar. librar. de Terr. Bon. & Catall. veſtris & cujuſlibet veſtrum ad opus noſtr. levand. firmiter Injungend. præcipimus quod ab omni ulteriori Proſecutione quacunq; ad Com. Legem de pro vel ſup. verediçto prædict. ab hinc deſiſtes deſiſtet. & quilibet veſtr. deſiſt. donec Materia prædict. in dict. Cur. noſtr. plenar. audit. & determinat. vel aliter Ordinat. fuerit in hac parte. Et hoc ſub pœna prædict. nullatenus omittas nec omittat veſtrum aliquis ullo modo. Teſte, &c.

A Writ of Injunction quando nulla Cauſa  
oſtenſ. eſt.

**G**Eorgius, &c. C. D. ac omnibus & ſingulis  
Conſiliar. Attorn. & Sol, &c. ſaltem. Cum  
pro Cauſis & Rationibus nob. in Canc. noſtr.  
ter.

## 676 Of Injunctions in the Chancery.

ter. Die Nov. instan. ostens. ex parte A. B. Quer. versus te præfat. C. D. Def. Ordin. erat quod Breve nostr. de Injunctiōe è dict. Cur. nostr. vers. te præfat. Def. pro Moratione process. ad Com. Leg. vers. dict. Quer. super quandam Obligation. pro solution. nonagint. libr. prædict. Quer. &c. Testat. sur intrat. usq; ad audit. Cause emanaret nisi tu præfat. Def. super Notitiam ejusdem ordin. Clerico suo in Cur. dand. die Jovis tunc prox. futur. & nunc præterit. Causam in contrar. inde ostend. Nos in complemen. ordin. præd. & pro bonis Causis & Rationibus nobis eodem die, &c. ostens. Et pro eo quod tu præfat. Def. nulla. Causam in contrarium ordin. præd. ostendisti sicut per Certification. Registr. dict. Cur. nostr. plene apparet, Tibi igitur præfat. C. D. ac vob. præfat. Consil. Attorn. & Sol. suis & vestr. cuilibet sub pœna, &c. de Terr. Bon. & Catall. &c. ad opus nostrum levand. firmit. injungend. præcipimus quod ab omni ulteriori prosecutione quacunq; ad Com. Leg. vers. dict. Quer. de vel super Obligatione præd. cesses desistas cesset. & desistat. & quilibet vestrum ab hinc penitus cesset & desistat, donec materia præd., &c. Et hoc, &c.

### An Injunctiō to stay and restrain Waste.

**G**Eorgius, &c. A. B. nocnon Servientibus Agentibus & operariis suis quibuscunq; & eor. cuilibet salt. Ostens. est nobis in Cur. Canc. nostr. ex parte C. D. Quer. q'd cum idem Quer. per quandam suam queremon. coram nobis in dict. Cur. nostr. versus te præfat. A. B. Def. nuper

## Of Injunctions in the Chancery. 677

per exhibit. relevium sibi petiverit adhib. pro Materiis in eadem Queremon. content. quodque tu præfat. Def. diversa vasta & spolia perpetrasti & adhuc perpetrās super quodam Messuagio vel Tenem. ac super quibusdam antiquis terr. prat. & pastur. ad ead. spectan. ac etiam magn. vasta & spolia perpetrasti in discindend. diversis Arboribus Maeremii, &c. jacen. & exist. in Paroch. de, &c. in Com. n'ro S. minus iuste ut dicitur; Nos ad hæc Considerationem habentes vobis igitur præfat. omnibus & singulis Personis supradict. & vestr. cuilibet sub pæna, &c. de Terr. Bon. & Catal. vestris & cuilibet vestrum ad opus nostr. levand. firmiter injungend. præcipimus quod dictas antiquas terr. pasturas & prati arare vel sulcare ac aliquas arbores Maeremii super dicta Præmissa crescen. aut hujusmodi arbores, &c. jam decis. & prostrat. exinde asportare effodere eradicar. succider. prosterner. vel aliqua al. vasta sive spol. quacunq; in vel sup. dicta præmissa & messuag. sive Tenemen. prædict. facer. committer. sive perpetrar. aut committi permittere adhuc desistatis & quilibet vestrum adhuc penitus desistat, donec, &c. Et hoc, &c.

### Injunctio ad quiet. Possessionem.

**G**Eorgius, &c. C.D. de, &c. Armig. ac cui-  
cunq; al. Personæ sive quibuscunq; al. Per-  
sonis aliquod jus statu. Titulum clameum ujum  
possession. interesse sive demand. de vel in qua-  
dam parcella Terr. voc. &c. situat. &c. in Que-  
remon. A. B. Cor. nobis in Cur. Canc. nostr. vers.  
te



## 678 Of Injunctions in the Chancery.

te præfat. C. D. Def. nuper exhibit. mentionat. et specificat. aut de vel in aliqua inde parte vel parcel. per vel subter vos seu vestrum aliquem habend. claman. vel vendican. et eor. cuilibet salutem. Ostens. est nobis in Curia nostra prædict. quod dict. Quer. per Queremon. suam prædict. relevari petiverit pro Terr. prædict. quodq; tu præfat. Def. respons. tuam adinde adhibuisti ac licet dict. Quer. habuit actualem possessionem Terr. prædict. per Spacium, &c. Annor. ult. præterit. ante exhibition. Queremon. prædict. velut ex Sacro plen. liquet tamen præfat. Def. possession dict. Quer. disturbar. &c. min. iuste ut dicitur, Nos ad hæc Consideration. habentes tibi igitur præfat C. D. ac vobis ceteris personis supradict. et cuilibet vestr. sub pœna 200 l. de Terr. Bon. et Catal. &c. firmit. injungend. præcipimus quod dictos Quer. et assignat. suos plenam quietam et pacificam Possessionem Terr. in Queremon. prædict. ut præfertur querelat. et cujuslibet inde partis vel parcell. habere gaudere frui tenere et possidere permittatis et quilibet vestr. permittat, in tam amplis modo et forma prout dict. Quer. et assign. sui tempore exhibitionis Queremon. præd. et per tres annos ante habuerunt possederunt tenuerunt usi vel gavisifuer. aut eor. aliquis habuit tenuit usus vel gavisus fuit, donec et quousq; materia prædict. coram nobis in Cur. præd. plen. audit. et determin. fuerit. Et hoc, &c. Teste, &c.

## Of Injunctions in the Chancery. 679

If referred to Trial this Clause is added.

**C**UM super audit. materia Queremon. dict. Quer. coram nobis in Canc. nostr. prædict. ordinat. est quod Triatio ad Com. Legem ad prox. assis. fuer. tangen. præmissa Queremon. præd. querelat. equitate materiae post triationem prædict. h'it. et Cur. prædict. determinand. reservata; Nos interim Quer. A.B. talem possessionem gaudere qual. per tres annos ante Exhibit. Queremon. prædict. habuerit volentes, vobis, &c.

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## Of Certiorari Bills, and Procedendo's, &c.

**T**HE *Certiorari Bill* in this Court, is such whereby a special Writ of *Certiorari* is prayed, for Removing a Cause out of some inferior Court of Equity, upon Suggestion that the Cause is out of the Jurisdiction of such Court; or that the Witnesses or the Defendants live out of its Jurisdiction, and are not able by Reason of Age and Infirmities, or Distance of Place, to follow the Suit there; or that for some Cause equal Justice is not like to be done in such Court: So that a *Certiorari Bill* is something of the Nature of an *Injunction Bill*.

On Motion, and a Certificate from the Six Clerk that the Bill is filed, the *Certiorari Writ* pray'd by it will be granted by the Lord Chancellor;

If

cellor; and it is commonly directed to the Judge of the inferior Court, requiring him to certify or send to this Court the Tenor of the Bill or Plaint there, with the Process and Proceedings thereupon; and upon Making out and Receipt of the Writ, a Bond is to be entered into to the Master of the Rolls by the Plaintiff here before the Register, with Condition that the Bill exhibited contains Matter sufficient to bear a *Certiorari*, and that the Plaintiff prove the Suggestion of his Bill in fourteen Days after the Return of the Writ; (which is returnable *infra quatuordecim dies post receptionem ejusdem* by the Defendant) and if the Plaintiff fail to make his Proofs within the Time, a *Procedendo* may be awarded to the inferior Court, except the Plaintiff get an Order in the meanwhile for further Time on Affidavit of the Remoteness of his Witnesses, or other good Cause for the same.

This Writ lieth not upon an *English* Bill to remove Proceedings out of a Court of Law into this Court: Nor shall the Plaintiff in an inferior Court of Equity, but the Defendant only there, remove the Proceedings hither by *Certiorari*. And though such Defendant, who is Plaintiff in this Court, is to examine Proofs and have Publication within fourteen Days after the Writ is returned, as to his Proving the Surmises of his Bill, and giving the Court Jurisdiction; yet the other Side is not to examine to, or publish any Thing against it: But after the Plaintiff's first Examination to prove his Suggestions as to the Jurisdiction, if the Court retains the

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Cause,



Cause, both Parties are to examine orderly as to the Merits and Body of the Cause; and to have Publication in the ordinary Course.

It is said, that because a *Certiorari* was made with a long Return, (*viz.* Skipping over a Term) a *Procedendo* was awarded. And a *Procedendo* is a Writ directed to the Judge of the inferior Court, requiring him to proceed in a Cause which is removed hither by *Certiorari*, &c. on the Plaintiff's Suggestion not being sufficiently proved: Also it is used where the Cause is stay'd for a Time by *Supersedeas*.

There is another Kind of *Certiorari* for *Certifying Records* remaining in another Court, or in some Person's Custody, and necessary to be produc'd in a Suit depending here, directed to other Persons than the Judges of such Courts: As a *Certiorari* to the *Clerk of the Parliament*, to certify the Tenor of an Act of Parliament; or to the Treasurer and Chancellor of the *Exchequer*, to certify out of *Domesday Book* whether Lands be held in antient Demesne; or to *Commissioners* in a Cause, to certify Depositions of Witnesses, &c.

*Form of a Certiorari Bill to remove a Cause into the Chancery.*

**H**Umbly complaining sheweth, &c. your Orator *A. B.* of, &c. That whereas on or about, &c. *C. D.* of, &c. did, &c. (*setting forth a Cause prosecuted in the Lord Mayor's Court of London*) and your Orator hopes he shall make this, &c. fully appear by several  
Witnesses

Witnesses if Need be, which he could not produce within the said City of *London* before the said Lord Mayor and his Brethren the Aldermen of the said City, for that one *T. L.* a material Witness for your Orator concerning the said Premisses at the Time of the Cause, &c. then lived and resided and still lives and resides at *Westminster*, without the Jurisdiction of the said Lord Mayor and the said Aldermen of the said City of *London*; whereby your Orator had no Remedy to compel the said *J. L.* to be examined, or to give his Testimony in the said Cause in the City of *London* concerning the Premisses, but only in this Honourable Court, &c. *In tender Consideration* whereof, and forasmuch as for Want of Jurisdiction in the said Lord Mayor and his Brethren the Aldermen of *London* over your Orator's Witnesses, your Orator is remediless there, and it being agreeable with the Rules and Practice of this Court, upon such Necessities and Defects of Jurisdiction in inferior Courts, for this High and Honourable Court to remove the Records and Proceedings thereof hither, and to proceed in this Court upon the same, and all Matters and Things incident thereto, whereupon your Orator seeks Relief; *May it please your Lordship* therefore, not only to grant unto your Orator a Writ of *Certiorari* to be directed to the said Lord Mayor of the City of *London*, and his Brethren the Aldermen of the said City, thereby commanding them, on the Receipt of the said Writ, to certify and remove the Records of the said Cause, and all Proceedings there-

upon into this Honourable Court; but also to grant unto your Orator his Majesty's most gracious Writ of *Subpœna*, to be directed to the said *C. D.* thereby commanding him at a certain Day, and under a certain Pain, therein to be limited, personally to be and appear before your Lordship in the High and Honourable Court of Chancery, then and there upon his corporal Oath fully and directly to answer all and singular the Premisses, and particularly to set forth and discover whether, &c. and that your said Orator may be relieved in the Premisses according to Equity and good Conscience, and the said *C. D.* may stand to, observe and perform such Order and Decree therein as your Lordship in your great Wisdom shall think just and meet.

*And your Orator shall ever pray, &c.*

*A Writ of Certiorari to remove a Cause.*

**G**Eorgius, &c. Majori Aldermannis & Vic,  
London salutem. Volentes certis de Cau-  
sis Certiorari de & super quandam Petitionem  
sive Billam Queremon. coram vobis seu vestrum  
aliquo versus *C. D.* ad sectam *A. B.* nuper exhi-  
bit. & modo penden. vobis mandamus quod Pe-  
titionem seu billam prædict. cum omnib. ea tan-  
gen. quibuscunq; nominib. partes præd. censean-  
tur seu eorum aliquis censeatur nobis in Can-  
cellar. nostr. adeo plene & integre prout in Cu-  
stodia vestra vel alicujus vestrum nunc residen,  
sub sigillis vestris distincte & aperte mittatis

Y y

india



*indilate & hoc Breve ut ulterius inde fieri faciamus quod de Jure fuerit faciend. Teste, &c.*

*Certiorari super Attachiamment.*

**G**Eorgius, &c. Majori, &c. *Salutem. Volentes cert. de Caus. Certiorar. de & super Record. & processu cujusdam actionis in Cur. nostr. coram vobis vel aliquibus vestrum indecis. penden. vers. C. D. Gen. ad Sect. A. B. in placito debiti sup. demand. Octogint. librar. ac de & super quodam Attachiamment. sum. nonagint. & sex libr. in pecun. numerat. ut Denar. dict. C. D. in manib. & Custodia cujusd. E. F. existen. & defens. vobis præcipimus quod Record. & process. actionis & Attach. præd. cum omnib. ea tangen. quibuscunque noi'bus partes præd. censeant. vel aliquis vestr. censeat. nobis in Cancellariâ nostrâ in quatuordecim dies post Reception. hujus Brevis ubicunq. tunc fuerit sub sigill. vestr. distinct. & aperte Mittatis ut ulter. inde fieri fac. quod de Jure fuerit fiend', &c.*

*A Certiorari to certify an Act of Parliament.*

**G**Eorgius, &c. Dilect. & fidel. T. J. Ar. Clerico Parliamentor. nostr. *Salutem. Volentes certis de Causis Certiorari sup. tenorem cujusdem Acti Parliam. fact. & edit. in Parlamento nostro tent. & inchoat. apud Westm. die, &c. Anno Regni nostr. &c. & ibidem usq. diem, &c. continuat. ac deinceps usq. diem, &c. prox. sequen. prorogat. Intitulat. An Act for, &c. Tibi præcipimus quod tenorem*  
Act.

*Act. Parliam. prædict. cum omnibus eum tangen. nob. in Canc. nostram sub sigillo tuo distincte & aperte sine dilatione mittas & hoc Breve. Teste, &c.*

**Certiorar. Super Depositiones Testium.**

**G**Eorgius, &c. Dilectis, &c. Salutem. Volentis de Causis Certiorari sup. examinationibus & depositionib. quorumcunq. Testium de omnibus fact. & progressionib. vestr. in præmiss. int. A. B. Quer. & C. D. Def. per vos præfat. Com. tres vel duos vestrum super quibusdam Inter. virtute Brevis nostr. de Com. vob. trib. vel duob. vestr. direct. capt. & examinat. penes vos jam residen. (ut dicitur) vob. & cuilibet vestr. Mandam. quod Examinationes & Depositiones omniaque fact. & progress. vestros in præmiss. adeo plene & integre prout coram vobis tribus vel duob. vestr. capt. fuer. nobis in Canc. nostr. sine dilatione ubicunque tunc fuerit sub sigill. vestris trium vel duor. vestr. claus. distincte & aperte Certificetis & mittat. unacum Com. & Interr. præd. Et hoc Breve, &c.

**A Procedendo after a Certiorari.**

**G**Eorgius, &c. Majori Aldermannis & Vic. London. Salutem. Cum vobis per Brev. nostrum nuper præcepimus quod quandam Billam Anglicanam unacum omnibus eam tangen. in Curia nost. coram vobis secundum Consuetud. Civitatis prædict. vers. C. D. Defendentem ad sectam A. B. Quer. penden. nobis in Cur. Cancellar.

## 686 Of Writs Ne Exeat Regnum,

*cellar. nostr. ad certum diem jam præteritum Certificetis, quibusdem tamen certis de causis nos specialit. moven. vobis mandamus quod in Materia prædict. inter partes prædict. Brevis nostr. prædict. non obstante ea celeritate qua poteritis procedatis. Teste, &c.*

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## Of Writs Ne Exeat Regnum, Habeas Corpus's, and other Writs.

**N**E *Exeat Regnum* is a Writ issuing out of the Chancery to restrain a Subject from going out of the Kingdom, without the King's Licence. By the Common Law, any Man might go out of the Realm at his Pleasure, except he were restrained therefrom by Proclamation, Writ or Mandate under the Privy Seal: But by the Stat. 5 R. 2. none but great Men, notable Merchants, and the King's Soldiers were to go out of the Realm without the King's Special Licence for the same.

The Writ *Ne Exeat Regnum* was formerly a Writ of Grace, and with the Writ *Homine Replegiando*, &c. granted on a Bill filed in Chancery; but now may be obtained on Petition or Motion: And it was used to be granted at the Pleasure of the Court, on *Affidavit*, or other Matter shewn, setting forth that the Party design'd to go out of the Kingdom to the other Party's Damage, &c. And any one, by Surmise made to the Lord Chancellor of the Party's going



ing beyond Sea, might have this Writ for or on Behalf of the King: Tho' if the Writ be sued for the King, the Party against whom it is issued, may come into this Court, and on good Cause shewn obtain a Licence under the Privy Seal or Signet, (called a Passport) which will excuse and discharge him from Contempt.

This Writ is now mostly used where a Suit is commenced in the Chancery against a Man, and he designing to defeat the other of his just Demand, or to avoid the Justice and Equity of this Court, is about to go beyond Sea; or where a Debt or Duty will be endanger'd if he goes. And 'tis said a *Ne Exeat Regnum* has been granted to stay a Defendant from going to *Scotland*; for tho' it be not out of the Kingdom, yet 'tis out of the Process of the Court, and within the same Mischiefe. It was antiently directed to the Party himself, and if he then went abroad, he might be fined; or it was directed to the Sheriff, Justices of Peace, &c. to make the Party find Surety that he would not depart the Realm, and on his Refusal, to commit him to Prison: At this Time it is commonly directed to the Sheriff only. And the Party that sues it, usually marks on the Back of the Writ in what Sum the Bond for yielding Obedience to it shall be; which is generally 1000*l.* or some other large Sum, and for which a Bond is to be given to the Master of the Rolls.

When the Party is taken, he either gives such Bond to the Master of the Rolls as aforesaid; or satisfies the Court by Answering, or by Affidavit, or otherwise, that he designs not to go

## 688 *Of Writs Ne Exeat Regnum,*

out of the Realm, and then gives such reasonable Security as the Court shall direct, whereupon he is discharged. And while this Writ was reckon'd among the Writs of Grace, if the Party against whom it issued, had answered and denied the Equity of the Plaintiff's Bill, and the Court saw no Cause to the contrary, the Writ would be *superseded*; and I suppose it will be now so.

It hath been held to be an Abuse to this Process to break open Doors, and take the Party in his Bed; but the Court would not order him (for this Cause) to be set at Liberty.

### *A Writ Ne Exeat Regnum.*

**G**Eorgius, &c. Vic. S. Salutem. Quia dat. est nobis intelligi quod C. D. vers. partes extraneas ad quamplur. nobis & quampluribus de Populo nostro præjudicialia & dampnosa ibidem prosequend. transire proponit, Nos Malitiæ suæ resistere volentes in hac parte tibi præcipim. firmit. injungend. quod absque dilatione quacunque præfat C. D. coram te corporalit. venire fac. ac ipsum ad sufficien. manucaptos inveniend. qui eum manucapere voluerint sub certa pena per te rationabil. imponend. pro qua nobis respondere voluerint quod ipse versus aliquas partes extraneas sine Licentia nostra speciali se non divertit nec qu'cunq; ibid. prosequitur aut prosequi vel attemptare præsumet quod in nostri contemptum vel præjudicium aut Populi nostr. Dampn. cedere valeat nec aliquem vel aliquos ibid. mittet ex hac causa quovismodo

com-

*compellas. Et si hoc coram te facere recusaverit tunc ipsum C. D. prox. Prison. nostr. committas in eadem salvo custodiend. quousq; hoc gratis facer. voluerit & cum securitatem illam sic ceperis nos in Canc. nostr. sub sigillo tuo distincte & aperte reddas certiores hoc Breve nobis remittens, Teste, &c.*

*Of the Writ Habeas Corpus, &c.*

**T**HIS is a Writ directed to the Keeper of the *Fleet* Prison, or some other, to bring into this Court the Body of a Person in his Custody; and is also had on Petition or Motion: It is generally used in Order to a Man's answering and clearing his Contempts, so as he may be either discharged or fined, &c. And sometimes where a Person apprehends himself to be wrongfully imprisoned, he brings this Writ for his Enlargement; which is called a *Habeas Corpus cum Causa*.

A Prisoner in a Gaol in the Country, being in Contempt for not performing a Decree, may be brought up by this Writ, and turned over to the *Fleet*; whence he is not to go 'till he has obey'd the Decree of the Court. And it is served by delivering the Writ to the Keeper, or other Person, in whose Custody the Party is, and keeping a Copy thereof; and if such Keeper do not obey it, then issues an *Alias*, and so a *Pluries*, which if he yield not Obedience to, nor makes any Return thereupon in his Excuse, and which the Court shall think sufficient, then if he be an Officer or Minister of this Court, and



## 690 *Of Writs Ne Exeat Regnum,*

it be touching a Cause depending here, the Court will punish his Contempt: But if it be for a Matter at large, and the Keeper of the Prison do not yield Obedience to the Writ, the Party has his Remedy by the Statute 30 Car. 2. ch. 2.

And by that Statute (called the *Habeas Corpus* Law) the Lord Chancellor, or any Judge, &c. denying a Writ of *Habeas Corpus* for the Benefit of the Subject, where required to be granted, shall forfeit 500 *l.* to the Prisoner; and Gaolers refusing to make Return of the Writ, are liable to a Penalty of 100 *l.* for the first Offence, and 200 *l.* for the second Offence, &c.

*A Writ of Habeas Corpus, to the Keeper of the Fleet Prison.*

**G**Eorgius, &c. *Guardiano Prisons nostre de le Fleet, sive ejus Deputat. ibidem Salutem. Tibi precipimus quod Corp. C. D. quocumq; Nomine sive additione nominis idem C. censeat. capt. & in Prisons nostra sub Custod. tua detent. ut dicitur Habeas coram nobis in Canc. nostr. immediate post Receptionem hujus Brevis & sic abinde usq; &c. prox. futur. ubicumq; tunc fuerit ad faciend. & recipiend. quod dicta Cur. nostra de eo Consideraverit in hac parte, Et hoc nullatenus omittas, Et habeas ibi hoc Breve. Teste, &c.*

*Writ of Habeas Corpus cum Causa.*

**G**Eorgius, &c. Marescallo Marescalciæ Cur. nostr. coram nobis tenend. sive ejus Depu-  
tat. ibidem salutem. Præcipim. tibi quod Corp. A. B. quocunq; nomine &c. censeatur sive nuncu-  
pat. in Prisonsa nostra sub Custodia tua Capta & detenta ut dicitur una cum Causa vel Causis captionis, &c. Et habeas, &c. coram nobis in Curia Cancellariæ nostr. (tali Return.) ubicun-  
que tunc fuerit adtunc & ibidem faciendum & recipiend. quod dicta Cur. nostr. consideraverit, &c. Et hoc, &c.

*Form of a Habeas Corp. Vic. on a Contempt.*

**G**Eorgius, &c. Vic. S. Salutem. Cum nos per Brev. nostr. nup. Vic. dict. comitat. præcepim. quod Attach. C. D. ita quod h'eat coram nob. in Cur. Canc. nostr. ad certum Diem in dicto Brevis nostr. content. ac ill. nob. in eandem Cur. nostr. retornavit quod Virtute Brevis nostri præd. Cepit Corpus prædict. C. D. cujus quidem Corpus adeo Languidum esset in Prisonsa nostra Com. præd. sub Custodia sua ut ill. ad diem præd. paratum h'ere non potuit tibi igitur præcipim. firmit. injungen. quod Corp. prædict. C. D. nunc sub Custodia tua ut dicitur detent. habeas coram nob. in dict. Canc. nostr. in Octab. &c. ubicunq; tunc fuerit unacum Causa vel Causis Captionis & detentionis ipsius C. D. in Prisonsa præd. ad Respond. nob. tam de quodam Contemptu per præfat. C. D. illat. ut dicitur quam  
de

## 692 Of Writs Ne Exeat Regnum,

*de hiis quæ sibi tunc ibidem objicientur, Et ad faciend. ulterius & recipiend. quod dict. Cur. nostr. Consideraverit in hac parte, Et hoc sub periculo incumben. nullaten. omittas, Et habeas, &c.*

### Of the Writ Homine Replegiando.

**A** *Homine Replegiando* is an antient Writ for bailing a Man out of Prison: And it lies against one who conveys away secretly, or keeps in his Custody another Person against his Will.

It is obtained upon *Affidavit* made of the Matter, and a Petition to the Lord Chancellor, who thereupon grants this Writ with an *Alias* and *Pluries*, directed to the Sheriff; and he returns an *Elongatus*, whereupon issues a *Capias in Withernam*, to take the Body of that Person that has so conveyed away or keeps in his Custody another: And when such Person is taken on the *Capias in Withernam*, the Sheriff cannot bail him: But the Court where the Writ is returnable, if they think fit, may grant a *Habeas Corpus* to the Sheriff to bring him into Court, and bail or remand him, as they see Cause.

In a *Homine Replegiando*, it hath been adjudg'd, that it doth not differ from a common Replevin, on which the Sheriff must return a *Deliberari feci*, or an Excuse why he doth not: That where he cannot make Deliverance, if he return an *Elongatus*, the Defendant is not concluded by that Return to plead *non cepit*; and after the Return of the *Elongatus* and a *Capias in Withernam*, if the Defendant plead this Plea,

he



he shall be bailed, for the *Withernam* is no Execution: And also, that in a *Homine Replegiando*, after an *Elongatus* return'd, if the Defendant comes in *gratis*, and pleads *non Cepit*, &c. he shall not be oblig'd to give Bail; but if he come in upon the Return of the *Capias*, he must give Bail, and shall not be admitted to it 'till he plead *non cepit*. 2 Salk. Rep. 581.

This Writ is sometimes brought where Infants have been taken out of the Custody of their Guardians, &c. and 'tis said the Court of Chancery may proceed herein by Order without Writ.

### Of Attachments, and other Process, and Contempts, &c. in the Chancery.

**A** Attachment, in the most common Use of the Word, is an Apprehension of a Man by his Body, to bring him to answer the Action of the Plaintiff: And a Writ of Attachment out of *Chancery* may be had of Course upon Affidavit made that the Defendant was served with a *Subpœna*, and appeared not; or upon Non-performance of any Order, or Decree, &c.

Where the Defendant in a Suit is served with a *Subpœna* to answer, and doth not appear at the Return thereof, then on *Affidavit* made of due Service of the said Writ, as the Law requires, the Plaintiff may issue an *Attachment* against the Defendant for his Contempt; which Writ is of the following Form, *viz.*

*A Writ*

## A Writ of Attachment, for Non-Appearance.

**G**Eorgius, &c. Vic. S. Salutem. Tibi precipimus quod Attachias C. D. Ita quod eum habeas coram nobis in Cancel. nostra in Crastin. Sanct. Trin. prox. futur. (vel al. Retorn.) ubicunque tunc fuerimus ad Respondend. nobis tam de quodam contemptu per præfat C. D. nobis illat. ut dicitur quam super hiis quæ sibi tunc ibidem objicientur Et ad faciend. ulterius & recipiend. quod Cur. nostr. consideraverit in hac parte. Et hoc nullatenus omittas, Et habeas ibi hoc Breve. Teste, &c.

And if the Defendant cannot be found on this Writ, so that the Sheriff returns a *Non est Inventus in Balliva sua*; then if the Plaintiff's Suit is for staying Proceedings at Law, the Court will sometimes grant an Injunction, (tho' this by the Act 4 & 5 Ann. ought to be granted together with the *Subpæna ad Respondend.* and is so pray'd in the Bill) and thereupon the Defendant's Suit at Law is to be stayed 'till the Defendant appears and answers the Plaintiff's Bill in this Court, and satisfies the Court touching the Contempt.

But in ordinary Cases, after the first Attachment is return'd *Non est Invent.* the Plaintiff proceeds to take out an *Attachment with Proclamations*; and this Writ upon Return of the former, as aforesaid, is granted of Course.

*An Attachment with Proclamations.*

**G**Eorgius, &c. *Vic. S. Salutem. Præcipimus tibi quod in omnibus & singulis locis infra Ballivam tuam tam infr. Libertat. quam extra ubi magis expedire videris ex parte nostr. publice Proclamari facias quod C. D. sub pœna Li-geantia sue coram nobis in Curia Cancellaria nostr. in Octabis Sanct. Michaelis proxim. futur. &c. ubicunq; tunc fuerimus personaliter compareat. Et nihilominus si præfat. C. D. interim invenire poteris ipsum Attachias, Ita quod eum habeas coram nobis in Cur. nostr. prædict. ad Diem prædict. ad Respondend. nobis tam de quodam Contemptu per præfat. C. D. nobis illat', &c. Et ad faciend. ulterius & recipiend. quod dicta Curia nostra consideraver. in hac parte, Et hoc nullaten. omitit'. Et habeas ibi, &c.*

In these Attachments, and all other Writs that are to be issued, a particular Regard is to be had to the Jurisdiction and Privileges of certain Places, as the *Cinque Ports*, *Counties Palatine*, &c. and the Direction of the Writs in such Cases is of a peculiar Form. If to the *Cinque Ports*, the Writ is directed thus:

**G**Eorgius, &c. *Prædilecto & fideli suo A. Domin. de B. &c. Constabular. Castri sui de Dover ac Deputat. suo in Officio Custodis Quinque Portuum suorum salutem. Vobis Mandamus quod sub sigillo Officii vestri Ballivo Libertat. de Hastings, &c. vel Majori Ballivis & Jura-*



*Furatoribus antiquæ Villæ de Rumney, &c.* (as the Case is) *Detis in Mandatis quod Attachiat. C. D. &c. Ita quod eum habeas, &c. ut supra.* And if the Writ is to be executed within the County Palatine of Lancaster, it is directed as follows, *viz. Prædilect. & fidel. suo N. Domino de L. Cancellar. suo Ducatus sui Lancastriæ vel ejus Deputat. ibid. Salutem. Vobis Mandamus quod per Breve nostr. sub sigill. nostr. Comitatus nostri Ducatus prædict. Vicecom. nostr. ejusdem Comitatus Detis in Mandat. quod Attachiat. C. D. &c.* And if the Attachment be awarded against any one dwelling within the County Palatine of Chester, then it is directed, *T. Domin. F. Camerario nostro Cestriæ, vel ejus Locum tenenti salutem. Mandamus vobis quod per Brev. nostr. sub sigillo nostro Comitatus nostr. Palatini Cestriæ Detis in Mandat. Vicecom. Com. præd. quod Attachiat, &c.*

And note, in all Cases where the Sheriff doth not make his Return of the Writ, if directed to him, this Court will amerce him; which Amercement is estreated into the Exchequer, and is commonly 5 *l.* But it is usual to give the Sheriff a Day for that Purpose, and if he do not by that Time return the Writ, the Court setteth the Amercement.

*Attachments for Costs* are of the like Form as those above; only the Writ is indorsed thus: *Per Cur. ad sectam A. B. quia Def. non solvit Expens,* &c. And when any Attachment is duly gotten, it cannot be discharged till the Defendant has paid 10 *s.* Costs, and double on eve-

ry succeeding Process; but upon Payment thereof, and filing his Answer, Plea or Demurrer, he is discharged of Course.

An Attachment with Proclamations being return'd *Non est Inventus* by the Sheriff; then there issues a *Commission of Rebellion*, which is directed to such Commissioners as the Plaintiff shall name; and 'tis said a Commission of Rebellion is always directed to private Persons, usually six or seven, and not to the Sheriff. And where a Commission of Rebellion issues against any Person for a Contempt in not appearing on the *Subpana*, and other subsequent Process, the Commissioners may break open an House to take him, because of his Contempt to the Law and the King, and by this Commission he stands outlawed as a Rebel and Contemner of the Laws; of which he cannot purge himself 'till Appearance: But upon the Processes of Attachment, the Sheriff or his Officers cannot break open the House of any Man; tho' the Commissioners may on the Commission of Rebellion.

And the Commission of Rebellion is made out after the following Form, *viz.*

*A Commission of Rebellion.*

GEorgius, &c. *Dilectis sibi A. B. C. D. E. F. G. H. &c. Salutem. Quia T. D. cum per Publicas Proclamationes per Vic. S. in diversis locis ejusdem Com. virtute Brevis nostri eidem Vic. direct. ex parte nostr. fact. precept. fuit quod idem T. D. sub pœna Ligeanc. sue coram nobis in Cancell. nostr. ad certum Diem jam præterit.*

*præterit. Personaliter compareret, Mandato tamen nostro in ea parte parere Manifeste contempserit; ideo vobis conjunctim & divisim Mandamus quod præfat. T. D. ubicunq; fuerit invent. infra Regn. nostr. Magn. Britanniaë tanquam Rebellem & Legis nostr. Contemptorem Attachiatis vel attachiari faciatis, Ita quod eum habeatis, vel haberi faciatis, coram nobis in dict. Cur. Cancellar. nostra Die, &c. ubicunque tunc fuerimus ad Respondend. super hiis quæ sibi objicientur tunc ibid. & ad faciend. ulterius & recipiend. quod dict. Curia nostra consideraverit in hac parte, & hoc nullatenus omitatis. Damus etiam universis & singulis Vicecomitibus, Majoribus, Ballivis, Constabulariis & aliis Officiariis & Ministris Legeis & subditis nostris quibuscunq; tam infra Libertates quam extra, tenore præsentium firmiter in Mandatis quod vobis & cuilibet vestrum in Executione præmissorum attendentes sint & assistentes in omnibus diligenter prout decet. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes. Teste, &c.*

If those Persons that are Commissioners in the Commission of Rebellion have taken the Party in Contempt, and they suffer him to go at large, they themselves may be committed until they bring him in: And where the Commissioners, having a Defendant in Contempt, afterwards let him go where he pleased, whereby he escaped, the Court ordered they should be committed 'till they paid the Debt, &c. *Trin. 1 Jac. 1.* And therefore it is necessary and u-



ful for the Commissioners, to take a Bond from the Person so in Contempt, with one or more Sureties for the Party's Appearance, &c.

Also if the Party is taken either upon an Attachment, Attachment with Proclamations, or Commission of Rebellion, he ought to pay Costs, and to enter his Appearance with the Register; or else give Bond to appear and answer his Contempt, &c. otherwise he will be committed to the Fleet 'till he has paid the Costs and answered the Plaintiff's Bill.

The Bond for appearing and answering the Contempt, is thus drawn.

A Bond to the Commissioners for Appearance.

**N**Overint universi per presentes nos T. D. de, &c. gen. L. M. de, &c. teneri & firmiter obligari A. B. de, &c. Armig. C. D. de, &c. E. F. de, &c. Gen. in ducentis Libris legalis Monetæ Magn. Britan. solvend. eisdem A. B. C. D. E. F. &c. vel alicui eorum, aut suis certis Attornat. Executoribus Administratoribus vel Assignatis suis, ad quam quidem solutionem bene & fideliter faciend. obligamus nos & quemlibet nostrum per se pro toto & in solido Heredes, Executors & Administratores nostros firmiter per presentes sigillis nostris sigillat. dat. die, &c. Anno Regni, &c.

The Condition of this Obligation is such, That if the above-bound T. D. shall and do personally appear before our Sovereign Lord the King,

in his Majesty's High Court of Chancery, on the Morrow of all Souls now next coming; upon a Commission of Rebellion issued out of the said Court against him at the Suit of, &c. and do and shall answer as well for his Contempt, as also all such Things as shall be then and there objected against him, and do and perform what the said Court shall award or order in that Behalf, then this Obligation to be void, or else to stand and remain in full Force, &c.

On the Defendant's Appearing before taken by any of the said Writs of Attachment, &c. a *Supersedeas* may be obtained, without paying Costs to the Plaintiff: But it is usually had on Motion, and shewing Cause for the same.

A *Supersedeas* to an Attachment, on Cause shewn.

**G**Eorgius, &c. Vic. S. Salutem. Licet nos nuper per Brev. nostr. tibi præceperimus quod Attachiar. T. D. Ita quod eum haberes coram nobis in Cancellaria nostra ad certum Diem in dicto Brevis content. ubicunq; tunc foret ad Respondend. nobis tam de quodam Contemptu per præfat. T. D. illat. ut dicebatur, quam de aliis sibi tunc ibid. objiciend. Quibusdam tamen certis de Causis nos jam moven. tibi præcipimus quod Executioni Brevis nostr. præd. vers. præfat. T. D. fact. vel faciend. *Supersedeas* omnino. Et si ipsum T. D. ea occasione ceperis tunc ipsum à Prisonâ qua sic detinetur, si ea occasione & non alia detineatur in eadem, sine dilatione deliberari facias. Teste, &c.

*Super-*

*Supersedeas to a Commission of Rebellion.*

**G**Eorgius, &c. *Dilectis sibi A. B. C. D. E. F. G. H. &c. Salutem. Licet per Literas nostras Patentes vobis conjunctim & divisim Mandavimus quod T. D. ubicunq; invent. foret infra Regnum nostrum Magn. Britan. tanquam Rebellem & Legis nostr. Contemptorem Attachiatis, vel attachiari faciatis, Ita quod eum habeatis, vel haberi faciatis coram nobis in Cancell. nostr. ad certum Diem in eisdem Literis Patentibus content. ad Respondend. nobis tam de quodam Contemptu per præfat. T. D. illat. ut dicebatur quam de aliis sibi tunc objiciend. prout in eisdem Literis plenius continetur. Quibusdam tamen certis de Causis nos jam specialiter moventibus vobis & cuilibet vestrum Mandamus quod cuicunq; Execut. Literarum nostrar. Patent. præd. per vos seu aliquem vestrum fact. vel faciend. versus præfat. T. D. Superseadeatis omnino prædict. Literis Patent. in contrar. in aliquo non obstan. Et si ipsum T. D. prætextu Literar. Patent. præd. ceperitis, seu aliquis vestrum ceperit, tunc ipsum à Prisonâ, &c. deliberari faciatis, &c.*

By Virtue of a *Supersedeas* so made out and procured, tho' the Defendant be taken on any of the foregoing Processes, and kept in Custody by the Sheriff or Commissioners, or detained in Prison by them, on serving them with this Writ, and paying Costs and giving Bond for his Appearance as aforesaid, he is to be discharged out



of Prison, and from the Contempt: But where the Defendant appears not on the Return of the Commission of Rebellion, nor procures a *Superseas*, but stands out further in Contempt, then the Plaintiff's Counsel by Motion in Court, and producing the said Commission returned with a *Non est Inventus*, may have an Order for a *Serjeant at Arms* to be sent to take such Defendant.

There is to be 15 Days between the *Teste* and Return of these Processes; and after the former Process return'd, the succeeding Process goes presently, *i. e.* it is to bear *Teste* the same Day that the former is returnable. And the Plaintiff ought to use his best Endeavours, that every one of the said several Processes be duly served and executed upon the Defendant: For if it be made appear to the Court that the Plaintiff hath been guilty of any wilful Default or Neglect therein, he shall pay good Costs to the Defendant, and lose the Benefit of the Process so returned without using such Endeavours. *Ord. Canc. 15, 138.*

If the Party in Contempt cannot be taken by the Serjeant at Arms, or if he resist the Serjeant, or when he is taken if he make his Escape, and so persist in his Contempt; in such Cases, on Affidavit of such Contempt and a Motion thereupon, a *Sequestration* may be had of the Party's Lands. And this Sequestration is a Commission generally directed to seven Persons therein named, and empowering them to seize the Defendant's real and personal Estate into their Hands, or some particular Part of his Lands,

Lands, &c. and to receive and sequester the Rents and Profits thereof, until the Defendant shall have answered the Plaintiff's Bill, or performed some other Matter which has been ordered by the Court, for not doing whereof he is in Contempt, as aforesaid.

Where the Suit is for Lands, a Sequestration will be granted of all the Party's Lands, Tenements and Hereditaments, with an *Injunction* for the Profits of the Lands, Tenements, &c. to be delivered to the Plaintiff, by the Sheriff or the Commissioners for that Purpose named in the Commission of Sequestration: And an Injunction upon a Sequestration is the utmost Process that this Court can issue for Contempt of Non-appearance, &c.

A *Commission of Sequestration*, where the Defendant has stood out all Processes of Contempt, &c.

GEorgius, &c. *Dilectis sibi A. B. C. D. E. F. G. H. &c. Salutem. Cum L. A. Quer. quandam Billam & Petitionem suam de Quere- mon. coram nobis in Cancellar. nostr. vers. T. D. Defendentem exhibuit, Cumq; præfat. Defen- dens cum Brevi nostro de Subpæna ad Queremo- niam prædict. comparend. & respondend. debite inseruit. fuit, ita tamen agere omnino recusavit, unde versus eum special. Process. dict. Curie no- stræ usque ad servien. ad Arma emanarunt, Ac etiam pro eo quod serviens ad Arma Cur. nostr. prædict. præfat. Defendentem nusquam venire*

*Certificavit velut per Certificationem suam in ea parte manifeste apparet; Sciatis igitur quod nos Æquum & Iustum fieri volentes de Fidelitat. & providis circumspectionibus vestris plurimum confidentes in complemen. cujusdam Ordinis dict. Curie nostr. inter partes predict. fact. geren. dat. (tali die, &c.) Dedimus vobis tribus vel duobus vestrum plenam Potestatem & Authoritatem in & sup. Messuag. Terr. Tenement. & Hereditament. quæcunq; predict. T. D. accedend. ingrediend. & intrand. ac omnia Reddit. Exit. & Proficua Commoditat. & Emolument. quæcunque Messuag. Terr. Tenement. & Hereditament. & Real. Stat. predict. T. D. necnon omnia & singula Bona & Catalla quæcunq; & Stat. Personal. præfat. T. D. ubicunque invenire possitis in manus vestras trium vel duorum vestrum capiend. levand. & colligend. seu levari capi & colligi faciend. illaq; sequestrand. prout eadem tenore presentium sequestramus; Et ideo vobis tribus vel duobus vestrum Mandamus quod diebus locis & horis ad hoc congruis & opportunis ad dict. Messuag. Terr. Tenement. & Hereditament. quæcunque præfat. T. D. accedatis eademq; intretis & ingrediamini, ac omnia reddit. Exit. & Proficua Commoditat. & Emolument. quæcunque predict. Messuag. Terr. Tenement. & Hereditament. ac stat. Real. necnon omn. & singul. Bona & Catall. & stat. personal. quæcunq; præfat. T. D. ubicunq; inven. fuerint in manus vestras trium vel duorum vestr. levetis, capiatis vel colligatis, seu levari, capi & colligi faciatis, illaq; sub hujusmod. tuto & salvo sequestro conservetis*



vetis & custodiatis donec & quousq; præfat. T. Queremon. prædict. plene & perfecte Responderit, & pro Contemptibus omnibus suis plenar. satisfecerit dictaq; Curia nostra aliter ordinaverit in hac parte specialiter. Teste, &c.

A Sequestration after a former, till the Defendant shall answer, and discharge his Contempts.

Georgius, &c. Dilectis, &c. Salutem. Cum G L. A. Quer. quandam Queremoniam suam coram nobis in Cur. Canc. nostr. vers. T.D. Defenden. tali die, &c. exhibuit, Relevium sibi petens adhiberi pro Materiis in eadem content. Quodque cum præfat. Defendens Brev. nostr. de Subpœna ad comparend. & Queremon. prædict. respondend. debite inservit. existens ita agere recusat, &c. Et ideo (tali die) tunc prox. sequen. Ordinatum fuit quod Commissio nostr. ad sequestrand. Personalem Stat. dict. Defend. ac redditus Exitus & proficua Realis status ipsius Defendentis, donec Queremon. prædict. perfecte Responderet, & al. Ordo in contrar. inde fact. foret è dicta Cur. nostr. emanaret, nisi præfat. Defenden. super notitiam Clerico suo in dict. Cur. nostra prius datam Causam in contrar. inde infra biduum ostenderet. Jamq; super auditu Consiliorum ex utraq; parte erudit. nos Ordin. præd. observari volentes; Sciatis igitur quod nos de Fidelitatibus & providis circumspeditionibus vestris plurimum confidentes, Assignavimus vos ac tenore præsentium damus vobis quatuor tribus vel duobus vestr. plen. Potestat. & Authoritat. ad omnia &

*singula Maneria, Messuagia sive Tenementa, Terras, Prata pascua & Hereditamenta quæcunq; dict. Defendentis accedend. eaq; intrandi & ingrediendi, ac Redditus, Exitus & Proficua eorundem, necnon totum statum personal. ipsius Defenden. in manus vestras quatuor, trium vel duorum vestrum, capiend. levand. colligend. exigend. recipiend. & sequestrand. Et ideo vobis Mandamus quod vos, quatuor tres vel duo vestrum (ad certos dies & loca quos ad hoc provideritis) conven. & assembletis, ac ad omnia & singula Maneria Messuag. Terras Tenementa & Hereditamenta dict. Defendentis accedatis eaque intretis & ingrediamini ac Reddit. Exit. & Proficua eorundem, necnon totum statum Personalem ips. Defend. in manus vestras, quatuor trium vel duor. vestr. capiat, levetis, colligatis, exigatis, recipiat & sequestretis, donec & quousq; præfat. Defend. Queremon. præd. directe & perfecte Responderit, dictaq; Curia nostra aliter in contrar. inde specialiter ordinaverit. Teste, &c.*

*An Injunction upon the foregoing Sequestration.*

**G**Eorgius, &c. T. D. ac omnia al. Person. sive omnibus aliis Personis haben. clameum sive vendican. aliquod Jus, Statum, Titulum, Interesse, Clameum vel Demand. quodcunque per vel subter te præfat. T. D. de in vel ad omnia & singula Maneria sive Tenementa, Terras, Prata, Pascua & Hereditamenta quæcunq; aut de in vel ad aliquod statum Real. sive personal. ad te prædict. T. D. spectan', &c. mentionat. & specificat. in quadam Queremon. L. A. Ar. Quer. co-

ram

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ram nobis in Cancellaria nostra versus teipsum  
exhibuit. aut de vel in aliqua inde parte vel par-  
cella per vel subter te præfat. T. D. haben. clam.  
vel vendican. & eorum cuilibet Salutem. Cum  
præd. L. A. per Quereimon. præd', &c. (setting  
forth as in the Sequestration the Defendant's Con-  
tempt) Quodq; tu præfat. T. D. superinde pro  
defectu Comparationis & Responſionis ad Quere-  
mon. prædict. in Contemptu & Contumacione sis,  
& ideo Breve nostrum de sequestratione emanavit  
direct. A. B. C. D. E. F. &c. Commissionar.  
præd', &c. dand. eis Potestatem sequestrand.  
omnem statum tam Real. quam personal. tui præ-  
fat. T. D. Defenden. sed præfat. Commissionar.  
cum eandem sequestrationem exequi voluer. ad  
Domum Mansionalem tuam de, &c. venien. &  
in eandem admitti non potuerunt velut ex Certi-  
ficatione liquet. Nos ad hoc Considerationem  
habentes, volentesque Mandat. dict. Cur. nostr.  
inviolabiliter observari; Tibi igitur præfat. T. D.  
ac vobis præfat. cæteris omnibus & singulis Per-  
sonis supradiçt. & cuilibet vestrum, sub pœna tri-  
um Mille Librar. de Terris Bonis & Catallis  
vestris ad opus nostrum levand', firmiter Injun-  
gend. Præcipimus quod sine dilatione permitta-  
tis & quilibet vestrum permittat dictos A. B.  
C. D. E. F. &c. sequestratores & Agentes suos  
quatuor tres vel duos eorum Maner. Messuag', &c.  
tua & Dom. Mansional. Terr. & præmiss. præ-  
dict. intrare & Possession. eorundem accipere &  
Reddit. Exitus & Proficua eorund. & cuiuslibet  
inde partis & parcell. in Manus & Possessiones  
suas accipere & recipere & easdem juxta tenorem  
Brevis de sequestrat. præd. sequestrare, donec  
&



*Et quousq; tu præfat. T. D. Queremon. prædict. L. A. directe & perfecte Responderis, ac donec & quousq; Custagia & Dampna quæ prædict. L. in hac parte sustinuit eidem L. satisfeceris juxta directionem dict. Cur. Canc. nostr. Et hoc sub pæn. prædict. nullatenus omittatis, nec aliquis vestrum omittat quovismodo. Teste meipso apud Westm', &c.*

As to *Contempts* in general, these Rules are to be observ'd concerning them, *viz.* 1. All Procefs of Contempt shall be made into the County where the Party prosecuted is usually resident, unless he shall be at that Time occasionally in or about *London*; in which Case it may be made into such County where he is so occasionally resident. 2. And if any Person shall be taken upon Procefs otherwise, or any Way irregularly issued, the Party so taken, first appearing unto and satisfying the Procefs which had regularly issued against him, shall be discharg'd of his Contempt; and have his full Costs to be taxed of Course by the Six Clerks, not towards the Cause, for the undue Prosecution, &c. 3. All Attachments on Procefs shall be discharged upon the Defendant's Payment, or Tender to the Plaintiff's Clerk and Refusal, of the ordinary Costs of the Court, and filing his Plea, Answer, or Demurrer, as the Case requires, without any Motion in Court on that Behalf. 4. And if after such Conformity and Payment of the Costs, (or Tender and Refusal as aforesaid) any further Prosecution be had on the said Contempt, the Party prosecuted shall be discharged with his Costs.

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Costs. 5. Where a Contempt is prosecuted against any Man, he shall not be put to move the Court, as was formerly used, either for Interrogatories to be exhibited, or for Reference of his Examinations, or for his Discharge when examined; but when he shall be brought in by Process, or shall appear *gratis* to be examined, upon a Contempt, he shall only give Notice of such his Appearance to the Attorney or Clerk on the other Side. 6. And if within 8 Days after such Appearance and Notice given, Interrogatories shall not be exhibited whereon to examine the Party; or if no Reference be procured of his Examination, nor Commission taken out on the other Side, nor Witnesses examined in Court to prove the Contempt within one Month; then the Party so examined shall be discharged of his Contempt, without further Motion; and may attend any one of the Masters of the Court for the Taxing of his Costs, which the Master is to tax without further Order; and that Taxation, being entered with the Register, the Party may proceed for the Costs as in other Cases. 7. If after Appearance and Interrogatories exhibited as aforesaid, the Party appearing shall depart before he is examined, (without Leave of the Court) upon Motion and Certificate of the same, &c. he shall stand committed without further Day to be given unto him; and is not to be discharged from his Contempt, until he hath been examined and is cleared thereof. 8. And if he shall upon his Examinations, or by Proofs be found in Contempt, and thereupon committed, he shall clear  
such

such his Contempt, and pay the Prosecutor his Costs before he be discharged of his Imprisonment. 9. And tho' he be cleared of his said Contempt, he shall have no Costs, in Respect of his Disobedience in not submitting to be examined without the Prosecutor's Trouble and Charges in moving the Court, &c. 10. But upon Examination or Proof of a Contempt referred to any of the Masters of the Court, to certify whether the Contempt be confessed or proved, or not; the Master in his Certificate thereof shall also assess and certify the Costs to either Party, as there shall be Cause. *Ord. Canc.* 137, 138, 139, 141.

All Persons, guilty of any *Breach* of the *Orders* of the Court, shall be committed for the Contempt; which is to be examined into upon Oath on Interrogatories, and if the Contempt be found, the Parties must clear it, and pay Costs to the Prosecutor, &c.

Here follow divers *Miscellaneous Writs, Commissions* and other *Process*.

*A Commission to examine a Defendant on a Contempt.*

**G**Eorgius, &c. *Dilectis sibi, &c. Salutem.*  
*Sciatis quod nos Assignavimus vos ac tenore presentium Damus vobis tribus vel duobus vestrum plenam Potestat. & Authoritat. C.D. Def. & al. tangen. quendam Contemptum præd. C.D. in Materia Respons', &c. sua perpetrat. ut dicitur de & super quibusdam Interrogat. presentibus interclus. diligent. Examinand. (juxta directionem.*



## Commissions, Processes, &c. 711

*rection. cuiusdam Ordin. dict. Cur. nostr. in ea parte fact. & reddit. geren. dat. die, &c. ult. praterit.) Et ideo vobis tribus vel duobus vestrum Mandamus quod, &c. (to ad Examinationemq; suam) super Contempt. præd. recipiat, &c. prout in Com, &c.*

Commission. ad Ex. Test. ad proband. Contempt'.

**G**Eorgius, &c. (*usq; ad Authoritatem*) Testes quoscunq; de & super quibusdam Interr. tangen. vel concernen. quendam Contempt. per C. D. perpetrat. ut dicitur præsentibus interclus. diligenter Examinand. Et ideo, &c.

A Commission to assign a Guardian for an Infant.

**G**Eorgius, &c. *Dilectis, &c. Salutem. Cum* A. B. Quer. quandam Petitionem coram nobis in Cancellaria nostr. vers. C. D. Infantem Defenden. infra etatem nup. exhibuerit; Sciat quod nos de Fidelitatibus & providis circumspeditionibus vestris plurimum confidentes Damus vobis tribus vel duobus vestrum Potestatem & Authoritatem in complemen. cuiusdam ordinis dict. Cur. nostr. inter partes præd. fact. geren. dat, &c. E. F. præsen. Guard. præfat. C. D. Infant. quem Infans præd. elegit ad Respondend. & Defendend. dict. sectam præfat. Quer. admittend. & assignand. Et ideo vobis, &c. quos ad hoc provideritis Infantem prædict. coram vobis tribus vel

*vel duobus vestrum venire fac. & evocetis ac Guardian. Infant. præd. admittetis & assignetis Et cum sic feceritis nos de nomine Guardian. præd. in dict. Cancellar. nostr. a die, &c. ubicunq; tunc fuerit, &c. distincte & aperte reddatis certiores hoc Brev. etiam remitten. Teste, &c.*

Commission to take an Infant's Answer by Guardian.

**G**Eorgius, &c. Cum A. B. Querens quand. Petitionem coram nobis in Cur. Cancellar. nostr. vers. C. D. Infantem Defendentem nup. exhibuerit Quodq; eidem Defendenti per Breve nostr. assign. Guardian, &c. Sciatis quod Dedicimus vobis tribus vel duobus vestr. Potestatem & Autoritatem ipsum Defenden. per Guardian. præd. de & super Materiam petitionis præd., &c. Et ideo vobis, &c. quos ad hoc provideritis ad præfat. Defend. Guardian. Infant. præd. si commode ad vos, &c. accedatis ac ipsum Defend. per Guardian. suum de & super Materia petitionis præd. sup. sacramentum Guardiani Infantis præd. fact. per ips. prius coram vobis, &c. diligenter Examinetis Responsionemq; suam eidem Petitioni fiend. recipiatis & in scriptis in pergamenno redigatis, &c. cum nobis in Cancellariam nostram, &c. ubicunq; tunc fuerit, &c. Teste, &c.

*A Special Commission to bring in and restore an Infant to her Guardian, &c.*

**G**Eorgius, &c. *Omnibus & singulis Majoribus Vicecomitibus Ballivis Sub-Ballivis Constabular. ac omnibus al. Officiar. quibuscunq; ad conservand. pacem nostr. appunctuat. & eorum cuilibet Salutem. Cum per quend. Ordin. coram Dom. Georg. primo nup. Reg. Magn. Britann', &c. Cur. Canc. sue nup. fact. inter A. B. Infan. per Guardian. Quer. & C. D. Def. geren. dat', &c. Ordinat. fit quod quidam E. F. Guard. pro præd. A. B. sit constitutus & dict. Infan. in Custod. sua reciperet & præd. C. D. per Ordin. præd. præcept. fuit præfat. A. B. Infan. præd. E. F. deliberare unacum omnibus suis Vestimentis & Ornamentis Cumq; præfat. C. D. in Contempt. dict. Ordin. & Cur. nostr. dictam Infan. A. B. præfat. E. F. licet adinde præfat. C. D. sæpius requisit. fuit nondum deliberavit sed præd. C. D. præfat. Infan. in Custodia sua adhuc detinet; Sciatis igitur quod nos Ordin. dict. Cur. nostr. inviolabilit. observar. volentes ac in complemen. cujusdam al. Ordin. dict. Cur. nostr. geren. dat', &c. ult. præterit. Dedimus ac tenore præsentium Damus vobis & cuilibet vestr. Potestatem & Authoritatem in ad & sup. omnia & singula Messuag. Tenemen. & loca quæcunq; & quamlibet inde partem sive parcellam accedendi intrandi ac ingred. ad inveniend. præd. A. B. Infan. Et ideo vobis & cuilibet vestr. Mandamus quod immediate post Receptionem hujus Brevis ad in & super omnia & singula Messuag. Tene-*  
*men.*



men. & loca quaecunq; & quamlibet inde partem  
sive parcell. accedatis intretis & ingrediamini &  
quod extrema vestr. diligentia utamini ad inue-  
niend. præd. A. B. Infan. & cum ill. inveneritis  
eam capiatis & amoveatis & præfat. E. F. vel af-  
sign. suis deliberetis Ita quod præd. E. F. præd.  
A. B. Infan. in Custod. sua capiat & recipiat se-  
cund. tenorem Ordin. præd. Et hoc nullatenus  
omittatis nec omittat vestr. aliquis quovismodo.  
Teste, &c.

Com. ad assign. Guard. pro Lunatic.

**G**Eorgius, &c. Salutem. Cum A. B. Quer.  
quandam Queremon. suam coram nob. in  
Canc. nostr. nup. exhib. vers. C. D. Def. Cumq;  
accepim. quod dict. Def. ratione senectut. suæ in-  
sanæ Memoriae est & proinde min. sufficien. sect.  
præd. Respondere & Defend. Nos statu. ipsius  
Def. in hac parte prospicer. volentes, Sciatis igitur  
quod nos de Fidelitatibus & provid. circum-  
spectiõibus vestris plurimum confiden. ac in  
complemen. cuiusdam Ordin. int. partes præd. fact.  
geren. dat', &c. Assignavimus vos ac tenore præ-  
sentium Damus vob. trib', &c. plen. Potestat. &  
Authoritat. præfat. Def. accedend. inspiciend. &  
Examinand. ac si sit insanæ Memoriae tunc Guar-  
dian. ejusdem Def. nominand. & appunctuand.  
Et ideo vobis, &c. Mandam. quod ad cert. diem.  
& loc. quos ad hoc providerit. ad præfat. Def. si  
commode ad vos laborari non possit accedat'. Ac  
ipsum Def. viis & mod. quibus super statu suo  
melius poterit. informari circumspecte inspiciat.  
& Examinet. Quodq; si dict. Def. sit insan. Me-  
moriam

*moriamur tunc Guardian. dict. Def. ad Respondend.  
& Defendend. sect. præd. nominet. & appun-  
tuet. Et cum sic fecerit. tunc nos de nomine  
dict. Gaard. & de toto facto & progressu vestris  
in præmiss. in Canc. nostram sine dilatione ubi-  
cunq; tunc fuerit sub sigill. vestris tribus, &c.  
claus. distincte & aperte reddat. certiores hoc  
Breve nostr. tunc nob. etiam remitten. Teste, &c.*

*The Commissioners Certificate.*

**WE** whose Hands and Seals are here under  
subscribed and set, do humbly certify,  
That by Virtue of his Majesty's Commission out  
of the High Court of Chancery to us and others  
directed, and hereto annexed, the Day of, &c.  
we went unto *C. D.* in the said Commission  
mentioned, being in his own House in the Pa-  
rish of, &c. when, and where, after strict In-  
spection and Examination made according to the  
Tenor of the said Commission, we found the  
said *C. D.* by Reason of, &c. to be of very un-  
sound Memory and Understanding, and no Way  
sufficient or fit to answer unto or defend the said  
Suit mentioned in the said Commission: And  
therefore, in Pursuance of, and Obedience to the  
said Commission and Order therein mentioned,  
we have nominated and appointed, and by these  
Presents do nominate and appoint *E. F.* of, &c.  
Gent. Guardian to the said *C. D.* the said Suit  
to answer and defend, as by the said Commis-  
sion is commanded; all which we humbly cer-  
tify and submit to the Consideration of, &c.

Commission ad audiend. & terminand.

**G**Eorgius, &c. *Dilectis sibi, &c. Cum varia Lites & Controvers. nup. Ort. & Mot. fuerunt int. A. B. Querent. & C. D. Defendent. ac partes præd. pro meliori quiete sua ex eor. mutuo assensu & consensu tam Materias præd. quam omnes al. controversias Lites & demand. inter eos in Cancellar. nostr. jam penden. indecis. Arbitr. vestris commiserunt; Sciatis igitur quod nos de Fidelitatibus & providis circumspeditionibus vestris plurim. confiden. Assignavimus vos ac tenore præsentium in complemen. cujusdam Ordinis coram nobis in dict. Cancellar. nostra ex assensu partium præd. fact. geren. dat', &c. Damus vobis, &c. Potestat. & Authoritat. Materias præd. audiend. & Testes quoscunq; & partes præd. vobis producend. de & sup. quibusdam Interrogator. per partes præd. vobis exhibendum seu deliberand. diligenter Examinandum & easdem Materias superinde finaliter si possitis determinand. Et ideo vobis, &c. Mandamus quod ad certos Dies & loc. quos ad hoc provideritis tam partes præd. quam Testes quoscunque præd. coram vobis Venire faciatis ac ipsos Testes & eor. quemlibet per se separatim de & sup. Interrogat. præd. super Sacramenta sua fact. per ipsos prius coram vobis, &c. Sacrosanctis Dei Evangeliiis corporalit. præstand. diligenter Examinetis Examinationesq; suas super eisdem recipiatis & in scriptis in pergameno redigatis auditisq; superinde partium præd. rationibus invicem propositis & proponendis allegationibus intellectis totius rei veritate easdem Materias causasq; Litis & Controversiar. præd.*



præd. omnibus viis modis & mediis quibus melius sciveritis aut poteritis juxta sanas directiones vestras finaliter si possitis determinetis, sin autem Causam præd. determinare non possitis examinationes Testium præd. cum toto facto ac opinionibus vestris in præmiss. in tres partes, &c. ubicunque tunc fuer. sub sigill. vestr. trium, &c. distincte & aperte mittat. unacum Interrogator. præd. & hoc Breve facien. in præmiss. secundum tenorem veramque intentionem ordin. præd. quam vob. mittimus per latorem præsentium. Teste, &c.

A Commission ad separand. & distinguend. Terr.

**G**Eorgius, &c. Dilecto & fidel. nostro G. E. servien. ad legem, ac dilectis, &c. salutem. Cum quadam materie lites & differenc. nuper mot. & ort. fuer. cor. nob. in Cur. Canc. nostr. inter A. B. Quer. & C. D. Def. ad distinguend. metas & bund. diversar. terrar. in Com. &c. jacen. &c. quar. dict. Quer. in dominico suo ut de feod. seifitus est cumque per quend. ordin. cor. nobis in dict. Cur. nostr. inter partes prædict. fact. geren. dat. &c. ordinat. fuer. quod Breve nostr. de Commiss. è Cur. prædicta ad metas præd. terrar. distinguend. emanaret. Sciatis quod nos de fidelitatibus, &c. & in complemen. ordin. dict. Cur. nostr. inter partes præd. fact. geren. dat. &c. & cujusdam Certificat. sex Clericorum Cur. præd. superinde fact. damus vobis, &c. potestat. & authoritat. in terras & præmissa prædict. intrandi & ingrediendi easque perambuland. & supervidend. ac terr. &c. dict. Quer. unacum

metis & bundis earundem separandi, seponendi & distinguendi, ac pro meliori progress. vestro in præmiss. Damus vobis tribus vel plurib. vestr. potestatem & auctoritatem testes quoscunque per partes præd. seu eorum alter. producend. de & super quibusdam articul. sive interrogat. quæ idonea fore videritis ad veritat. præmiss. illustrand. sive inveniend. diligent. examinand. & facta scripta & evidencias quæcunque per partes prædict. seu ear. alter. per ordin. prædict. producend. super Sacrament. sua cor. vob. tribus vel pluribus vestr. Sacr. Dei Evangel. Corporalit. præstand. debite & respectively recipiend. Et ideo vobis, &c. mandamus quod ad cert. dies & horas ad hæc congruis & opportunis ad terr. & præmiss. præd. accedatis ac partes præd. testesque suos cor. vob. trib. vel plurib. vestr. Venire fac. & evocetis ac ipsos testes & eor. quemlibet per se separatim de & super interr. præd. sup. Sacrament. sua tact. per ipsos coram vobis, &c. Sacrosanctis Dei Evangelis corporalit. præstand. diligent. examinetis ac tam superinde quam omnibus al. viis modis & mediis licitis omni executione præmiss. diligent. intendatis ac terras præd. ut præfertur si poteritis separetis seponet. & distinguat. facien. in præmiss. secundum directionem veramque intentionem separal. ordin. præd. Et cum sic fecerit. nos de toto facto & progress. vestris in præmiss. in Canc. nostr. præd. tali die, &c. (the Return) ubicunque tunc fuerit per Certification. vestra. in scriptis in pergameno redact. sub sigill. vestr. trium vel plurim. vestr. claus. distincte & aperte reddat. certiores hoc Breve nob. remitten. Teste, &c.

A Writ

A Writ Distring. Corp.

**G**Eorgius, &c. Vic. S. salutem. Cum A. B. Quer. quendam Queremon. cor. nob. in Cur. Canc. nostr. vers. C. D. E. F. G. H. &c. Def. nuper exhibuer. ac dicti Def. per Breve nostr. de Subpœna summonit. fuer. ad respondend. Queremon. præd. velut ex Sacramento satis fide digno plene liquet ipsi tamen eidem Queremon. præd. respondere hucusque neglexerunt & contempserunt manifeste ut accepimus, ac quia dicti C. D. E. F. &c. sunt un. Corpus corporat. ideo per legem & consuetudin. Regni nostri Magn. Britan. attachiari minime debeant nec consueverunt, Tibi igitur præcipimus quod distringas præfat. C. D. E. F. &c. per omnia terras & tenement. sua infra Ballivam tuam quod nec ipsi nec aliquis per ipsos ad eas manus apponant seu apponat donec aliter a nobis habueris præceptum & quod de exitibus eor'dem respondeas ita quod dicti Def. coram nob. in dicta Cur. Canc. nostr. die, &c. ubicunque tunc fuer. compereant ad respondend. Queremon. præd. & ad faciend. ulterius & recipiend. quod dict. Cur. nostr. consideraverit in hac parte, Et hoc nullatenus omittas, Et habeas ibi hoc Breve. Teste, &c.

Breve Claus. super Ord. & Relationem.

**G**Eorgius, &c. C. D. salutem. Cum per quendam ordin. in Cur. Canc. nostr. nuper fact. & reddit. inter A. B. Quer. & te præfat.



fat. C.D. & al. Def. geren. dat. die, &c. præterit. inter al. ordinat. existit quod R. H. Armig. unius Magistrorum Cur. Canc. nostr. præd. compos. in partes præd. de & concernen. quibusdam Articulis in questione caperet. Cumque super calculation. illam præfat. C.D. sicut ex relatione Magistri præd. nobis die, &c. præterit, ostens. accepimus invent. fuisti in arrearagiis erga præd. Quer. in summa centum & septem librar. ut per relationem præd. remanen. cum Regro Cur. nostr. præd. plenius apparet Tibi igitur præfat. C.D. firmiter injungend. præcipimus quod solvas seu solvi fac. præd. Quer. summ. 107 l. præd. indilate juxta formam & veram effect. ordin. & relationis præd. Et hoc sub pericul. incumben. nullatenus omiti. Teste, &c.

A Writ ad ostend. Causam,

**G**Eorgius, &c. C.D. & E. ux. ejus salutem, Quibusdam certis de Causis coram nobis in Cur. Canc. nostr. propositis ac mention. & specificat. in quodam ordin. cor. nob. in dict. Cur. nostr. fact. inter A.B. Quer. & vos præfat. C.D. &c. Def. geren. dat. &c. Vobis præcipimus firmit. injungen. quod omnibus aliis prætermisissis & excusatione quacunque cessante in propr. person. vestr. sitis cor. nob. in dicta Canc. nostra die, &c. prox. futur. ubicunq; tunc fuer. ostendentes vel ostendi facientes in contrar. ordin. præd. cujus tenor. vob. mittimus, Et habeatis ibi hoc Breve. Teste, &c.

Note;

Note; This Writ must be close, and a Copy of the Order is to be left on the Service of it, as well as the Writ it self.

*A Superedeas of Privilege.*

**G**Eorgius, &c. *universis & singulis Justic. Judicibus Vic. Majoribus Balliv. Constabular. & omnibus al. Officiar. Ministris fidelibus nostr. quibuscunque tam infra libertates quam extra ad quos presentes literæ pervenerint salutem. Cum tam ex dignitate nostr. Reg. & Progenitor. nostror. quondam Regn. Angl. quam ex consuetud. antiqua in alma Cur. Cancellar. nostr. ac Progenitorum nostrorum a tempore cujus contrar. Memor. hom. non exist. hæten. obtent. & approbat. sit quod Cancellar. Angl. aut Custos magn. Sigill. Angl. pro tempore existen. ac al. resid. Officiar. Clerici & Ministri de eadem Cur. Canc. nostr. ac progenitor. nostrorum qui present. & prompti in obsequiis nostris infra eandem Cur. Cancellar. nostr. pro bono publico Regni nostri indies deserviant & insistant de hominibus servien. terr. tenemen. & bon. & catall. suis liberi ac quieti esse debeant ac temporibus retroactis esse consuever. juxta privileg. & libertat. Cur. Cancellar. nostr. præd. nec ad comparend. vel respondend. coram aliquibus Justiciar. Judicibus Officiar. aut Ministr. nostr. secularibus quibuscunque præterquam cor. Cancell. Angl. seu Custod. magn. Sigill. Angl. qui pro tempore fuerit super aliquibus placitis querelis transgress. seu demand. quibuscunque quæ person. nostr. non tangunt (placitis de libero tenemento*  
*A a a 4*  
*felon.*

*felon. & appell. duntaxat except.) aut ratione alicujus summonition. sive impanellation. de vel in aliquibus Assis. jurat. seu recogn. coram eisdem Justiciar. Judicibus Officiar. vel Ministr. capiend. aut ad aliquod officium Collector. subsidii decimar. & quintar. decim. Guardian. Eccles. Constabular. Supervisor. viarum Supervisorum pro Pauperibus sive ad vigiland. vel wardand. seu ad aliqua alia Officia servic. seu attendent. alibi quam in Cur. nostr. præd. exercend. quam a dicta Cur. nostra retrahi possint contra voluntat. suam trahi vel compelli arrestari implacitari imprisonari eligi seu onerari non debeant quovismod. nec aliquibus temporibus retro actis consueverunt, quæ quidem consuetudo privileg. & libertat. in Parliam. Domini Edwardi Regis Angliæ tertii Progenitoris nostri apud Westm. anno Regni sui decimo octavo tent. per ipsum Regem ac per Comites & Barones suos ac per alios in dict. Parliam. exist. accept. fuer. & approbat. prout per indorsamen. cujusdam petit. coram ipso Rege in dict. Parliam. exhibit. & in Rotulis ejusdem Parliam. irrotulat. plene liquet. Et quia A. B. est un. clericor. T. D. Ar. un. sex clericor. Cancell. nostr. præd. nos consuetud. & privileg. præd. erga & penes ipsum A. B. corroborantes & gratificantes ac ill. ei ad quod benefic. Causa præd. de jure est spectans inviolabilit. ut præd. est observari necnon firmiter & plenarie approbari volentes Vob. & cuilibet vestr. mandamus & firmit. injungend. præcipimus quod ipsum A. B. contra tenor. libertat. & privileg. prædict. non molestet. seu gravet. nec ad comparend. vel respondend. cor. aliquibus Justicior. Judicibus Offic.*

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Commissions, Processes, &c. 723

Offic. ad Ministr. secul. quibuscunque præterqua.  
cor. Cancel. nostr. Angl. seu Custod. Magni sigill.  
Angl. qui pro tempore fuerit super aliquibus pla-  
citis Querel. transgress. seu demand. quæ perso-  
nam nostr. non tangunt (placitis de libero ten'to  
Feloniis & Appell. duntaxat except.) nec ratione  
alicujus summonitionis sive Impanellationis com-  
pellat. nec vestr. aliquis compellat quovismodo nec  
in aliquib. Assis. Furat. seu Recognitionib. cor.  
præd. Justiciar. Judicib. vel aliis Officiar. aut  
Ministris quibuscunq. capiend. nec in aliquo Of-  
ficio Collector. subsidii, &c. Guard. Ecclesiæ Con-  
stabular. supervisor. pro pauperibus, &c. ponatis  
nec eligatis neq; ipsum ad vigiland. vel ward-  
and. vel ad aliquod aliud Officium servic. aut at-  
tenden. alibi quam in Cur. nostr. præd. faciend.  
aut exercend. compellatis nec compelli faciat. quo-  
vismodo Et distriction. si quam eidem A. B. ea  
Occasione fecer. seu aliquis vestr. fecerit ill. ei  
sine dilatione relaxetis & vestr. quilibet relaxet  
Ita quod ipse præd. A. B. inde per vos vel ali-  
quam vestr. contra tenor. Libertat. & privileg.  
præd. vel in aliquo premissorum non molestetur  
seu in aliquo gravetur nec ab aliis quantum vos  
obstare poteritis ipsum molestari seu gravari per-  
mittatis quovismodo. Teste, &c.

Superfed. Privileg. de veniendo & redeundo.

**G**Eorgius, &c. Universis & singulis Judicib.  
Justic. Vicecom. Majoribus Ballivis Con-  
stabular. ac omnib. al. Offic. Ministr. Ligeis &  
subditis nostr. quibuscunque & eor. cuilibet salu-  
tem. Cum secund. consuetudin. in Regno nostr.  
Angl.

Angl. hæcenus obtent. & approbat. homines ad presentiam nostr. de Mandato nostro speciali seu ad Cur. nostr. venien. ibid. moran. & ad propria redeun. ac eorum familiares & servien. infra protection. & Defenc. nostr. existunt special. ip-sique ratione alicujus debiti computi transgress. seu alter. cujuscunq; contract. dum sic circa Personam nostr. seu in Cur. nostr. de Mandato nostro spec. fuerint arrestari minime debeant seu imprisonari Cumque per quendam Ordinem cor. nob. in Cur. Canc. nostr. inter A. B. Quer. & C. D. & al. Defend. nup. fact. & reddit. geren. dat. &c. Ordinatur sit quod præd. Def. computum redderent cor. R. H. Armig. in Canc. nostr. Magistror. de & concernen. Mat'rias in eod. Ordin. menconat. ac præd. Defendentes ulter. Sexagint. Mill. passus præd. R. H. attendere in propr. personis suis vener. & attendant cor. personal. circa Comput. & Materias præd. valde necessar. & requisit sit Vobis igitur & cuilibet. vestr. Mandamus quod præd. C. D. &c. seu eorum alter. ratione alicujus Debi. Compti. transgr. seu altius cujuscunque contract. dum sic circa Mater. præd. attendant non Arrestetis seu Imprisonetis nec eos seu eorum alteru. contra Consuetud. præd. Molesteris in aliquo seu gravetis. Teste, &c.

*A Sequestration for not obeying a Decree, &c.*

**G**Eorgius, &c. Dilectis, &c. Salutem. Ostens. erat Nob. in Cur. Canc. nostr. die, &c. ult. præterit. ex parte A. B. Administrat. E. B. vid. Querent. vers. C. D. Ar. & M. uxor. ejus Executric. E. F. Def. quod. dict. E. F. defunct. requis.

quis. &c. nup. Marito præfat. E. B. Maner. de,  
 &c. & divers. Terr. situat, &c. in Com. &c. qui-  
 bus dicta E. B. Junctur. habuit ac per Agrea-  
 ment. 1000 l. Pecuniæ pro perquisitione præd.  
 sub fiducia pro dict. E. persolvi debuerint,  
 Quodq; dict. E. B. Decretum dict. Cur. nostr.  
 Canc. Anno Regni Regis, &c. vers. dict. Defen-  
 dentes obtinuit pro dict. sum. Mille librar. cum  
 Damagiis inde solvend. è statu tam Real. q'm  
 Personal. dict. E. F. in manibus præd. Def.  
 existen. Quodque R. H. Ar. un. Magistror. dict.  
 Cancellar. debm prædict. & Damagia inde ad  
 summam, &c. computavit ac satis status præd.  
 E. F. in manibus Def. existere certificavit,  
 Quodque præfat. Def. in Contemptu sistunt per  
 violation. Decret. præd. unde omnes Process.  
 dict. Cur. nostr. pro Contumacia sua emanave-  
 runt & servien. ad Arma dict. Cur. nostr. atten-  
 den. certificavit quod dicti Def. seipsos obscu-  
 rant ita quod ipsos apprehendere non poterit.  
 Sciatis igitur quod nos quod ad Justitiam per-  
 tinet spectan. & ea quæ per Cur. nostr. præd.  
 rite pacta deb. Executioni demandari volentes  
 ac de fidelitatib. & providis circumspèctionib.  
 vestr. plurim. confiden. Assignavim. vos ac te-  
 nore presentium Damus vobis tribus, &c. in  
 complemento tam cujusdem Ordin. dict. Cur.  
 nostr. inter partes præd. fact. geren. dat. &c.  
 quam cujusdam al. Ordin. in Cur. præd. geren.  
 dat. &c. Potestat. & Authoritat. ad Maner. &  
 Terras præd. ac etiam omnia & singula Messuag.  
 Terras & Tenenta præfat. Def. personalit. ac-  
 cedend. eaque intrandi & ingrediendi & omnes  
 & omnimod. reddit. exit. & proficua eorundem  
 quacunq;



quæcunq; necnon omnia & singula Bona Catalla  
 & Stat. quæcunq; dictor. Def. tam Real. quam  
 Personal. ubicunque invent. fuerint in Manus &  
 possess. vestr. trium vel, &c. capiend. petend. le-  
 vand. exigend. & recipiend. & ad usum dict. A.  
 B. Querent. Sequestrand. prout eadem tenore  
 presentium sequestram. Et ideo vobis, &c. Man-  
 dam. quod certis diebus & horis ad hæc congruis  
 & opportunis ad Maner. Terras Ten'ta & ad  
 omnia singula præmissa præd. accedatis intretis  
 & ingrediamini ac omnes & omnimod. reddit.  
 exit. & proficua quæcunq; eorundem & omnia  
 & singula Bona & Catalla & Stat. quæcunque  
 prædict. Def. tam Real. quam Personal. in ma-  
 nus & possesiones vestras trium, &c. capiatis pe-  
 tatis levetis exigatis & recipiatis & Debito modo  
 ad opus & usum dict. Quer. sequestret. Ac quic-  
 quid ratione præmissorum levabitur dict. A. B.  
 Quer. vel assign. suis de tempore in tempus de-  
 bito modo persolvat. & satisfaciat. donec pecunia  
 prædict. ut prefertur adjudic. & Damagia inde  
 dict. Quer. satisfac. fuerint juxta tenores ve-  
 rasque intentiones separal. Ordin. prædict. quor.  
 separal. tenorem vob. mittimus per Latorem præ-  
 sentium. Teste, &c.

## Of Commissions of Bankrupt. 727

### Of Proceedings in taking out and executing Commissions against Bankrupts.

There have been several Acts of Parliament made concerning Bankrupts, viz. 34 Hen. 8. 13 Eliz. 1. & 21 Jac. 1. 4 & 5 Ann. 5, 6, & 7 Geo. 1. &c. by which, the Lord Chancellor is empowered to take Order with the Bankrupt's Body, Lands and Goods; and to appoint Commissioners to sell the Lands, Goods, and Chattels of the Bankrupt, make Dividends, &c. And in the taking out a Commission of Bankrupt against any Man the first thing to be done is to make *Affidavit* before a Master in Chancery, that he is indebted in a Sum sufficient to make him a Bankrupt according to the Statutes; i. e. that he owes to one Creditor 100 *l.* or more, or 150 *l.* to two Creditors, or 200 *l.* to three or more Persons.

And this *Affidavit* of the Creditors is made as follows.

*Affidavit before a Master in order to the Suing out a Commission of Bankrupt.*

A. B. of, &c. maketh Oath, that C. D. of, &c. is truly and justly indebted to him this Deponent (one of the Creditors) in the Sum of One hundred Pounds and upwards; and that he is become a Bankrupt within the Meaning of  
one

## 728 *Of Commissions of Bankrupt.*

one or some of the Statutes made against Bankrupts, as this Deponent believes.

*Furat. 5. die Septembr.*

*A. B.*

*Anno Dom. 1728. coram.*

*M. T. Magistr. in Canc.*

This Affidavit must be followed with a *Petition* or Bill to the Lord Chancellor, of the following Purport.

*A Petition to the Lord Chancellor to grant a Commission of Bankrupt.*

**H**umbly complaining sheweth unto your Lordship, your Orator *A. B.* of, &c. as well for himself, as for all other the Creditors of *C. D.* of, &c. that whereas the said *C. D.* using and exercising the Trade of, &c. by way of bargaining, selling, exchanging and bartering, and seeking his Trade of Living by buying and selling, upon just and good Causes, for Wares and Merchandizes to him sold and delivered, and also for ready Money to him lent, &c. being indebted to your Orator in the Sum of 100*l.* on or about, &c. last, to the Intent to defraud and hinder your said Orator and other his Creditors of their just Debts and Duties to them due and owing, did become Bankrupt within the several Statutes made against Bankrupts (*viz.*) within the Statute made in the Parliament begun and holden at *Westminster* the Day, &c. in the 13th Year of the Reign of *Q. Eliz.* concerning Bankrupts, and within the Statute made in the Par-



## *Of Commissions of Bankrupt. 729*

liament begun and holden, &c. in the 1 & 21 K. James 1. and within the Statute, &c. 4 & 5 Q. Ann. and 5 & 6 Geo. 1. &c. or within some or one of them: In tender Consideration whereof, may it please your Lordship to grant unto your Orator his Majesty's most gracious Commission, to be directed to such and so many honest and discreet Persons as to your Lordship shall seem meet, authorizing them thereby not only concerning the said Bankrupt his Body, Lands and Tenements, Freehold and Copyhold, Goods, Chattels, Debts and other Things whatsoever, but also concerning all other Persons, who by Concealment, Claim or otherwise, do or shall offend touching the Premises, or any Part thereof, contrary to the true Intent and Meaning of the said Statutes, or any of them; and also to do and execute all and every Thing and Things whatsoever, as well for and towards Satisfaction and Payment of the said Creditors, as towards and for all other Intents and Purposes, according to the Direction and Provision of the said Statutes.

*And your Orator shall ever pray, &c.*

Next a Bond is to be given to the Lord Chancellor in 200 *l.* Penalty to prove the Party a Bankrupt, &c.

*A Bond*

## 730 Of Commissions of Bankrupt.

A Bond entered into to the Lord Chancellor,  
suing out a Commission.

**N**Overint universi per presentes me A. B. de,  
 &c. teneri & firmiter obligari præhonora-  
 bili P. Dom. K. Baron. de &c. Domino Cancell-  
 lario Magnæ Britanniae in Ducent. libris bone  
 & legalis Monetæ hujus Regni solvend. eidem  
 Domino Cancellar. aut suo certo Attornato Exe-  
 cutorib. Administratorib. vel Assignatis suis ad  
 quam quidem solutionem bene & fideliter faci-  
 end. obligo me Heredes Executores & Admini-  
 stratores meos firmiter per presentes sigillo meo  
 sigillat. dat. sexto die Septembris Anno Regni  
 Dom. Georgii secundi primo Annoq; Dom. 1728.

The Condition of this Obligation is such, that  
 if the abovebound *A. B.* do and shall before the  
 major Part of the Commissioners to be appoint-  
 ed in a Commission of Bankrupt against *C. D.*  
 of, &c. prove that the said *C. D.* is justly in-  
 debted unto the said *A. B.* in the Sum of 100*l.*  
 and in like Manner prove that the said *C. D.*  
 is become a Bankrupt within some or one of the  
 Statutes made against Bankrupts; then this Obliga-  
 tion to be void, or else to remain in full Force,  
 &c.

Then the *Commission* of Bankrupt issues, di-  
 rected to five Commissioners, (whereof two must  
 be Esquires of the *Quorum*) which Commission  
 is of the following Form.

## Of Commissions of Bankrupt. 731

### The Commission of Bankrupt.

**G**Eorge by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, &c. To our Trusty and well beloved E. F. G. H. J. K. L. M. and N. O. Greeting. Whereas we are informed that C. D. of, &c. using and exercising the Trade of, &c. by Way of Bargaining, Exchange, Bartering and Chevi-  
fance, and thereby seeking his Trade of Living, did by buying and selling about six Months since become Bankrupt within the several Statutes made against Bankrupts, to the Intent to defraud and hinder A. B. of, &c. and other his Creditors of their just Debts to them due and owing: We therefore minding the due Execution, as well of the Statute touching Orders for Bankrupts made in the Parliament begun and holden at Westminster the Day, &c. of, &c. in the 13th Year of the Reign of Elizabeth Q. of England made and provided, as of the Statute made in the Parliament begun and holden at Westminster the Day, &c. in the 1st Year of K. James of England, &c. entitled, *An Act for the further Relief of Creditors against such as shall become Bankrupts*; and also of the Statute made in the Parliament begun and holden, &c. in the 21st Year of the said K. James 1st, entitled, *An Act for the better Description of a Bankrupt, and Relief of Creditors against such Persons as become Bankrupts*; and also of the Statute made in the Parliament begun and holden at Westminster the Day, &c. in the 4th

B b b

Year



## 732 *Of Commissions of Bankrupt.*

Year of the Reign of her Majesty Q. Anne, entitled, *An Act to prevent Frauds committed by Bankrupts*; and also of an Act made in the second Session of the same Parliament, entitled, *An Act to explain and amend the said last mentioned Act*; and also of the Statute made in the 5 & 6 Years of the Reign of the late K. Geo. 1. entitled, &c. Upon Trust of and in the Wisdom and Fidelity, which we have conceived in you, do by these Presents name, assign, appoint, constitute and ordain you our special Commissioners for the Purpose aforesaid, giving full Power and Authority unto you or four or three of you to proceed according to the said Statutes, and every or any of them, not only concerning the said Bankrupt, his Body, Lands and Tenements, Goods and Chattels, Debts and other Things whatsoever, but also concerning all other Persons, who by Concealment, Claim or otherwise, do or shall offend touching the Premises, or any Part thereof, contrary to the true Intent and Meaning of the said Statutes, or any of them, and to do and execute all and every Thing and Things whatsoever, as well for and towards Satisfaction and Payment of the said Creditors, as towards and for all other Intents and Purposes, according to the Ordinance and Provision of the same Statutes; willing and commanding you, four or three of You, to proceed to the Execution of this our Commission, according to the true Intent and Meaning of the said Statutes, with all Diligence and Effect. *Witness* our self at *Westminster*, the Day of, &c. in the, &c. Year of our Reign.

Some-

## Of Commissions of Bankrupt. 733

Sometimes *Affidavit* is made, that the *Effects* of the *Bankrupt* lie in such a Place, where the Commission ought to be executed, &c. And if before Distribution of the Bankrupt's Estate, all the Commissioners but two, or if they of the *Quorum* happen to die, the rest cannot proceed alone; but a new Commission must be issued out, and the new Commissioners may call the old ones to Account, &c. Also a new Commission shall be granted for Fraud; and a Commission may be *superseded* on good Cause shewn.

### Fees of suing out a Commission of Bankrupt.

	l.	s.	d.
<b>F</b> OR drawing the Affidavit	0	4	6
To the Secretary of the Bankrupts	2	2	0
— his Clerk	0	5	0
For the Private Seal	2	2	0
To my Lord Chancellor's Secretary, &c.	2	2	0
To the Sealer	0	10	0
To the Porter	0	2	6
To the Hamper	0	3	6
For the Commission	5	16	2
Bond and Docquet	0	6	6
To the Clerk of the Docquets	0	10	0
Fee of Soliciting, &c.	1	1	0
	<hr/>	<hr/>	<hr/>
	15	5	2

## 734 *Of Commissions of Bankrupt.*

*Proclamation for a Bankrupt to appear, pursuant to the Statute 13 Eliz. & 1 Jac. 1.*

**O** Yes, O yes, O yes, The King's Majesty doth straitly charge and command *C. D.* late of, &c. Mercer, that he on the Day, &c. do yeild his Body before *E. F.* Esq; *G. H.* and *J. K.* &c. his Majesty's Commissioners, named and appointed for the Execution of the Statutes of Bankrupts against the said *C. D.* or the major Part of them that shall be then present, at the House of, &c. upon the Pains and Penalties in the said Statutes in that Case provided.

*God save the King.*

By the 4 *Ann.* & 5 *Geo.* 1. Bankrupts within 30 Days after Notice, are to surrender themselves to the Commissioners, and conform to the Acts by delivering up all their Effects and Estate, &c. or shall be guilty of Felony: And having surrendered, they are to be examined; and also Witnesses on Interrogatories touching the Bankruptcy.

*The Examination of a Bankrupt.*

*The Examination of C. D. a Bankrupt, taken upon Oath this Day, &c. in the Year, &c. by E. F. G. H. and J. K. his Majesty's Commissioners, &c.*

**T**HE said *C. D.* being sworn and examined upon his Oath faith, that the Paper-Book  
with



## *Of Commissions of Bankrupt. 735*

with Parchment Covers, which this Deponent did deliver in and exhibit to the Commissioners on, &c. last, entitled *An Account of the Estate and Effects of C. D.* doth contain and is a full and true Account, Disclosure and Discovery, how and in what Manner, to whom, and upon what Account and Consideration, he hath disposed of, assigned or transferred, any of his Goods, Wares, Merchandize, Money or other Effects or Estate, and all Books, Papers and Writings relating thereunto, of which he was possessed, or in or to which he was any Ways interested and intitled, or which any Person or Persons had or hath, or have had in Trust for this Deponent, or to his Use, on or about, &c. being the Time of his this Deponent's first Absconding, or at any Time since; (his own, Wife and Children's wearing Apparel only excepted.) And this Deponent also saith, That he hath delivered up to, &c. the Assignees, under the said Commission of Bankrupt taken out against him, all such Part of his Goods, Wares, Merchandizes, Money, and other Effects or Estate whatsoever, and all Books, Papers and Writings thereto relating, as were in this Deponent's Custody or Power, the Day, &c. last past, being the Time of this Deponent's surrendering himself to the Commissioners, or any Time since. And this Deponent further saith, That he hath not any Time made any Gift or Assignment, or other Conveyance or Disposition of any Part of his Estate or Effects, with Intent to defraud his Creditors, or whereby he expects any Benefit or Advantage to himself or Family.

*C. D.*

## 736 *Of Commissions of Bankrupt.*

*Interrogatories* for the Examination of Witnesses, are to be framed according to the Matters to be examined unto: Some Commissioners will have ready all the general Interrogatories, that fit the Examinations throughout all the Statutes; and others reject all formal Interrogatories, lest thereby the Witnesses by their Knowledge beforehand might make Evasions; but this is a careless and too slight Behaviour for Matters so weighty, and where Interrogatories are required, the Commissioners are bound to give them, especially in the Case of Concealments, and Debts, &c. due to the Bankrupt.

*Interrogatories administred to Witnesses on a Commission of Bankrupt.*

1. **D**O you know *C. D.* late of, &c. how long have you known him? Did he use the Trade of, &c. and for how long? And did he abscond on, &c. 2. Do you know of any Monies owing to the said *C. D.* the Bankrupt on, &c. the Time of his Absconding and becoming a Bankrupt, or since, and the same unpaid? Or do you know of any Goods sold and delivered by him to any Person or Persons, and to whom, and for what; was there any, and what Security, by Bill, Note, or otherwise, given for the same? Were you a Witness to such Note, &c. and did you see the same sign'd, &c. and subscribe your Name as a Witness thereto? Set forth the same, and declare what you know or believe herein, &c.

Form

## Of Commissions of Bankrupt. 737

### Form of Depositions of Witnesses.

*Depositions* of Witnesses had and taken the Day, &c. in the Year of the Reign, &c. at the House of, &c. and at other Times and Places by Adjournment, by *E. F.* Esq; and *G. H.* and *J. K.* Gent. by Virtue of his Majesty's Commission of Bankrupt under the Great Seal of *England*, (grounded upon the several Statutes made concerning Bankrupts) bearing Date at *Westminster* the Day, &c. awarded against *C. D.* of, &c. and directed to the said *E. F. G. H. J. K. L. M.* &c. Commissioners thereby appointed for the Execution thereof, or any four or three of them, as followeth, *viz.*

*T. R.* of, &c. being sworn and examined, deposeth as follows.

**T**HIS Deponent faith, That he well knows *C. D.* of, &c. and hath known him, &c. and that *L. G.* of, &c. is justly indebted unto the said *C. D.* the Bankrupt in the Sum of, &c. for Goods and Merchandize, *viz.* &c. sold and delivered by the said *C. D.* to the said *L. G.* on the Day, &c. and that he, this Deponent, was then Servant to the said *C. D.* and present at the Sale and Delivery thereof, and made an Entry of the said Sale and Debt in the Books of Account of the said *C. D.* wherein it now stands undischarg'd.

B b b 4

M. B.



## 738 *Of Commissions of Bankrupt.*

*M. B. of, &c. being sworn, deposeth, &c.*

That he, this Deponent, on or about, &c.  
did see and was a Witness to, &c.

*Oath to be administred to Witnesses.*

‘ **Y**OU are here produc’d as a Witness, by  
‘ Virtue of a Commission out of the High  
‘ Court of Chancery to us and others directed,  
‘ to be examined concerning the Bankruptcy of  
‘ *C. D.* late of, &c. You are therefore, to such  
‘ Questions and Interrogatories as shall be ad-  
‘ ministred unto you relating to the said *C. D.*  
‘ his Trade or Profession, his Absconding, and  
‘ other Acts which he hath done or suffered, by  
‘ which he may be discovered to be a Bankrupt,  
‘ and also concerning his Lands and Tenements,  
‘ Goods and Chattels, Debts and Duties, Frauds  
‘ and Concealments, and other Matters and  
‘ Things, in Obedience to the said Commission,  
‘ and pursuant to the several Statutes made con-  
‘ cerning Bankrupts, true and direct Answer to  
‘ make, and swear the Truth, the whole Truth,  
‘ and nothing but the Truth.

*So help you God.*

*A Warrant for Witnesses to appear.*

**W**Hereas the King’s Majesty’s Commission  
under the Great Seal of *Great Britain*,  
bearing

## Of Commissions of Bankrupt. 739

bearing Date, &c. last past, grounded on the several Statutes made concerning Bankrupts, hath been awarded against C. D. of, &c. and directed to us who have hereunto subscribed our Names and put our Seals, and to, &c. (the rest of the Commissioners) and we being the major Part of the Commissioners therein named, have taken upon us the Execution of the said Commission. *And whereas* it appears to us upon good and sufficient Proof, that the said C. D. hath for several Years past gain'd his Living by Buying and Selling of, &c. and other Merchandize, and thereby became indebted to A. B. and several other Persons in the Sum of, &c. and it also appearing to us, that the said C. D. is and was a Bankrupt to all Intents and Purposes within the Meaning of the several Statutes made against Bankrupts, or some or one of them, before the Suing forth of the said Commission; and we being credibly informed, that you T. R. M. B. &c. (to whom this our Warrant is directed) are necessary Witnesses for the Discovery of the Estate of the said C. D. *These are therefore* in his Majesty's Name, and by Virtue of the Statutes and Commission aforesaid, to charge and require you, and every of you, that you be and personally appear before us at, &c. on, &c. then and there to answer such Questions and Interrogatories as shall be demanded of and administred to you concerning the said C. D. and his Estate: And herein you are not to fail, under the Penalties in and by the said Acts provided against the Contemnors of the said

740 *Of Commissions of Bankrupt.*

said Authority. *Given* under our Hands and  
Seals, &c.

To Mr. *T. R. M. B.* &c.

*E. F.*  
*G. H.*  
*J. K.*

A *Commitment* of a *Person refusing to appear,*  
and be sworn, &c.

**W** *Hereas* his Majesty's Commission, &c.  
(*ut supra* down to its appearing that  
the said *C. D.* is a Bankrupt) And whereas  
*S. J.* was suspected to have concealed and se-  
cretly disposed of a great Part of the Goods and  
Estate of the said *C. D.* the Bankrupt, and was  
duly summoned by our Warrant under our  
Hands and Seals to appear before us; but hath  
made Default in Contempt of our Authority;  
And he at length coming and appearing before  
us, we then sitting in Execution of the said  
Commission, did obstinately refuse to be sworn  
and make answer to such Interrogatories and  
Questions as we, by Virtue of the said Commis-  
sion, required him to answer unto concerning  
the said *C. D.* and his Estate, according to the  
true Meaning of the said Statutes, for the Dis-  
covery of the Estate of the said *C. D.* in Con-  
tempt of the said Statutes, and of the Com-  
mission aforesaid, and the Authority thereby  
to us given. *These are therefore* to require  
you, and every of you, immediately upon  
Receipt hereof, to apprehend and take into  
your Custody the Body of the said *S. J.* and  
him



## *Of Commissions of Bankrupt. 741*

him safely to convey to his Majesty's Gaol for the County of, &c. and there to deliver him to the Keeper of the said Gaol; who is also hereby required and authorised, by Virtue of the said Commission and Statutes aforesaid, to receive the said *S. J.* into his Custody, and him safely to keep and detain, without Bail or Mainprize, until he shall conform himself to our Authority, and be thence delivered by due Course of Law; and for your and his so doing, this shall be your sufficient Warrant. *Given, &c.*

*Declaration by the Commissioners that a Man is a Bankrupt.*

**W**E whose Names are under-written, being the major Part of the Commissioners in the Commission appointed against *C. D.* late of, &c. having begun to put the said Commission in Execution, have on the Oath and Examination of divers credible Witnesses found that the said *C. D.* became a Bankrupt before the Date and Suing forth of the said Commission; and we do hereby declare, that the said *C. D.* is a Bankrupt accordingly.

*E. F.*

*G. H.*

*J. K.*

The Commissioners are to certify to the Lord Chancellor, that the Bankrupt hath conform'd; and four Parts in five, in Number and Value, of the Creditors, must sign the *Certificate*, which is then allowed by the Chancellor.

*A Cer-*

## 742 *Of Commissions of Bankrupt.*

*A Certificate to the Lord Chancellor of the Party's being a Bankrupt, and of his surrendering himself, conforming, &c.*

To the Right Honourable *P. Lord King*, Lord Chancellor of *Great Britain*.

**WE** *E. F. G. H.* and *J. K.* the major Part of the Commissioners named and appointed in and by a Commission of Bankrupt bearing Date, &c. awarded against *C. D.* of, &c. having begun to execute the said Commission, and found that the said *C. D.* became a Bankrupt before the Date and Suing out of the said Commission, within the true Intent and Meaning of some or one of the Statutes made against Bankrupts, do humbly certify to your Lordship that the said *C. D.* did on, &c. surrender himself to us, and submit to be examined upon Oath, before us from Time to Time, and in all Things to conform himself to an Act of Parliament made in the 4th and 5th Years of her Majesty *Q. Anne*, entitled, *An Act to prevent Frauds frequently committed by Bankrupts, &c.* and to the several other Statutes made against Bankrupts; whereupon, and for the better Discovery of the said Bankrupt's Estate, and putting in Execution the said Acts, we the said *E. F. G. H.* and *J. K.* have had several Meetings for the Examination of the said *C. D.* and caused due Notice to be published in the *Gazette* of the Time and Place, when and where we intended to finish his said Examination,

*Of Commissions of Bankrupt. 743*

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nation, to the Intent that the Creditors of the said *C. D.* might be heard against the Making the present Certificate, and also admitted to prove their Debts; and several Creditors having proved their Debts, and none shewn any Cause against making this Certificate: *We do therefore* further certify to your Lordship, that the said *C. D.* hath upon such Examination made a Discovery of his Estate and Effects, and in all Things conform'd himself, according to the Direction of the said Statutes; and that there doth not appear to us any Reason to doubt the Truth of such Discovery, or that the same is not a full Discovery of all the Estate and Effects of the said *C. D.* and the rather for that the Persons who have sign'd this Certificate, testifying their Consents to the same, are full four Parts in five in Number and Value of the Creditors of the said *C. D.* who have duly proved their said Debts. *Witness* our Hands and Seals, &c.

*Attestation of the Consent of the Creditors.*

**WE** whose Names are hereunto subscribed, Creditors of the above-named *C. D.* do hereby testify our Consent to the above-written Certificate; and also to the Discharge of the said *C. D.* *Witness* our Hands, &c.

The



## 744 *Of Commissions of Bankrupt.*

*The Allowance of the Certificate by the Lord Chancellor.*

**U**PON the Oath of *C. D.* the Bankrupt, that the Certificate within written was justly and fairly obtained, without any Fraud or Deceit in him, or by his Means or Procurement, and on due Consideration of the same, I do hereby (according to the Direction of the Statutes) allow of and confirm the said Certificate.

*King Canc.*

*An Order of Commissioners for Creditors to pay Contribution Money.*

**W**E *E. F. G. H.* and *J. K. &c.* being the major Part of the Commissioners named in a Commission of Bankrupt awarded against, *&c.* Do hereby order that the Contribution Money, to be raised towards defraying the Charges of suing forth and prosecuting the said Commission, and Recovery of the Estate of the said *C. D.* the Bankrupt, by Virtue thereof, be *1 s. per Pound*, and all and every Creditor and Creditors of the said *C. D.* who have sought, or shall hereafter in due Time come in and seek Relief, by Virtue of the said Commission, are hereby required to pay the said Sum of *1 s.* in the Pound Contribution Money, for every Pound or *20 s.* Debt, which they claim to be due and owing unto them severally and respectively by and from the said *C. D.* And we do further order,

## Of Commissions of Bankrupt. 745

that the said Contribution Money be paid unto, &c. whom we have appointed Treasurer, to receive and disburse the same as Occasion shall require. *Given* under our Hands, &c.

*Note*; The Commissioners must take *Security* from the Person appointed *Treasurer*, That he shall render a just and true Account of the Contribution Money, &c. when thereunto required.

### A Notice to Creditors of making a Dividend.

**WE** whose Names are subscribed, being the major Part of the Commissioners, &c. the four Months since the Date and Suing forth of the said Commission required by Law, having been long since expired, and the Creditors who have prosecuted the same having desired that we should proceed to make a Dividend of the Estate by us discovered and assign'd, as by the Statutes we are empowered; do therefore by these Presents give 14 Days Notice of such Dividend to be made, and that we do intend to meet for making the said Dividend on, &c. next, by ten of the Clock in the Forenoon of the same Day, at the *Irish Chamber in Guildhall, London*; and such Creditors who intend to have the Benefit of the said Commission, are to take Care to pursue the Directions of the Statutes in paying in their Contribution Money, according to our order, and also at the same Time and Place to come prepared to make due Proof of their respective Debts, lest they should be excluded the Dividend. *Dated* the Day, &c.

An

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*An Assignment of Goods and Chattels of a Bankrupt, upon Trust to be sold for the Use of his Creditors.*

**T***His Indenture made the Day and Year, &c. between E. F. of, &c. Esq; and G. H. and J. K. Gent. of the one Part, and L. R. of, &c. of the other Part. Whereas the King's Majesty's Commission under the Great Seal of Great Britain, grounded upon the several Statutes made concerning Bankrupts, bearing Date, &c. hath been awarded against C. D. late of, &c. and directed to the said E. F. G. H. J. K. &c. thereby giving full Power and Authority unto them the said Commissioners, or three of them, (whereof the said E. F. or, &c. to be one) to execute the same, as by the said Commission doth and may more fully appear. And whereas the said Commissioners having begun to put the said Commission in Execution, upon due Examination of Witnesses and other good Proof on Oath before them taken, have found that the said C. D. for the Space of, &c. Years, before the Date of the Commission, or thereabouts, hath used and exercised the Trade and Profession of, &c. at his House in, &c. and sought and endeavoured to get his Living by Buying and Selling; and that the said C. D. so seeking and endeavouring to get his Living by Buying and Selling, during the Time of the said Trading and Dealing, did become justly and truly indebted unto the above-named L. R. and other his Creditors in the Sum of 400 l. and up-*



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wards, and being so indebted, he the said *C. D.* did in the Judgment of the said Commissioners become Bankrupt to all Intents and Purposes within the Meaning of the several Statutes made concerning Bankrupts, or within some or one of them, before the Date and Suing forth the said Commission. *And whereas* the said Commissioners having also found out and discover'd that the said *C. D.* at the Time, and since he became a Bankrupt, as aforesaid, was possessed of, or interested in, or well intitled to, divers Goods, Wares, Merchandizes, Household-stuff, and Implements of Household, Bedding, Linen, Brass, Pewter, and other Commodities, mentioned and particularly expressed in the Schedule indented hereto annexed; and also that there are divers Debts, Sum and Sums of Money due and owing to the said *C. D.* and his Estate, by and from divers and fundry Persons, the Particulars of which said Debts, and the several and respective Persons Names are also mentioned, set down and expressed in the said Schedule hereunto annexed. *Now this Indenture witnesseth*, That the said Commissioners by Virtue of the said Commission, and the several Acts of Parliament therein mentioned, and in Consideration of the Covenants herein after, on the Part and Behalf of the said *L. R.* his Heirs, Executors and Administrators, covenanted to be performed and done, *Have* ordered, assigned and set over, and by these Presents do, as much as in them the said Commissioners lieth, and they lawfully may, order, assign and set over unto the said *L. R.* the before-mentioned Goods, Wares, Merchandizes,

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dizes, Household-stuff and Implements of Household, Bedding, Linen, Brasse, Pewter, and other Commodities in the said Schedule mentioned, and every Part and Parcel thereof, and all other Goods, Wares, and Merchandizes belonging to the said *C. D.* or his Estate, at the Time when, or since he became a Bankrupt as aforesaid, and also all the Debts, Sum and Sums of Money, mentioned in the said Schedule annexed, and all other Debts at the Time of the said *C. D.*'s becoming Bankrupt, or at any Time since, due and owing unto the said *C. D.* by or from the Persons therein named as Debtors, or any other Person or Persons whatsoever. *To have and to hold* the said Goods, Wares, Merchandizes, and all and singular other the Premises above-mentioned, and every Part thereof, and also the said Debts, and Sums of Money so mentioned and expressed in the said Schedule, and all Debts, Sum and Sums of Money whatsoever due and owing to the said *C. D.* and his Estate, by and from the respective Persons therein named and mentioned as Debtors, or any other Persons whatsoever, unto the said *L. R.* his Executors and Assigns for ever; *In Trust*, to and for the Use, Benefit and Advantage of the said *L. R.* and all other the Creditors of the said *C. D.* who have already sought, or shall hereafter in due Time come in as Creditors into the said Commission, and seek Relief thereby, and contribute to the Charges thereof, according to the Direction and Limitation of the several Statutes in that Behalf made and provided, and to or for none other Use, Intent or Purpose whatsoever.

*And*

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*And* the said *L. R.* for himself, his Heirs, Executors and Administrators, doth covenant, promise and grant, to and with the said Commissioners, and to and with each and every of them, in Manner following, (that is to say) that he the said *L. R.* his Heirs, Executors or Administrators, or some or one of them, shall and will, with all convenient Speed, sell and dispose of the said Goods, Wares, Merchandizes and Premises, and every Part thereof, for the most Money he can get for the same, and by all lawful Ways and Means sue for and recover the Debts mentioned in the said Schedule hereto annexed; and from and after the Recovery and Receipt thereof, shall and will, upon reasonable Request and Notice in Writing to him for that Purpose made or given by the said Commissioners, make and give a just, true, and perfect Account unto the said Commissioners, of all and every Sum and Sums of Money as he shall have raised and received by such Sale, and of all Sums of Money as he the said *L. R.* shall have raised and received out of the Debts hereby assign'd, by Force and Virtue of these Presents; and shall pay over all such Sums of Money as he shall have so raised, gotten, had and received, unto the said Commissioners, or the major Part of them, or dispose thereof as they shall order, direct or appoint, *To the End* the said Commissioners may order, distribute, divide and dispose thereof, for and towards the Payment and Satisfaction of the Debts due and owing by the said *C. D.* to such of his Creditors who have already sought, or shall hereafter in due Time come in



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and seek Relief by Virtue of the said Commission, and contribute to the Charges thereof as aforesaid. *And further*, that he the said *L. R.* his Heirs, Executors and Administrators, shall and will from Time to Time, and at all Times hereafter well and sufficiently save, defend and keep harmless and indemnified the said Commissioners, and every of them, their and every of their Executors and Administrators, and their Lands and Tenements, Goods and Chattels, of and from all Manner of Actions, Suits, Arrests, Losses, Costs, Damages and Expences whatsoever, which they or any of them shall or may suffer, sustain or be put unto for or by Reason of this present Deed of Assignment, or any other Matter or Thing whatsoever lawfully done or executed by them, by Virtue of the said Commission, or by Reason of their or any of their lawful Intermeddling or Dealings in any of the Estates of the said *C. D.* by Force and Virtue thereof. *In Witness, &c.*

*A Deed of Distribution amongst Creditors, of all the Bankrupt's Estate and Effects.*

**T***HIS Indenture made, &c. between E. F. G. H. and J. K. Commissioners, &c. of the one Part, and L. R. of, &c. T. E. R. D. A. B. &c. Creditors of C. D. late of, &c. of the other Part. Whereas the King's Majesty's Commission under the Great Seal, &c. And whereas, &c. (reciting the Commissioners having found the said C. D. a Bankrupt, and divers Debts due to him, Goods, Wares, Merchandizes, &c.*

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as in the foregoing Assignment) They the said Commissioners, Parties to these Presents, did by Indenture under their Hands and Seals duly executed, bearing Date, &c. for the Considerations, and the Uses, Intents and Purposes therein mentioned, order, assign and set over unto the said L. R. his Executors and Administrators, all and singular the Debts, Sum and Sums of Money, Goods, Wares and Merchandizes, and all other the Estate of the said C. D. particularly mentioned in the Schedule or Inventory to the said Deed or Indenture of Assignment annexed, as by the said Deed or Indenture may more fully and at large appear. *And whereas* the said L. R. hath actually gotten and received into his Hands or Possession, by Virtue of the said Assignment, divers Wares, Goods and Mercandizes, of and belonging to the said C. D. Part whereof he hath sold, and received the Money due for the same, and the Rest and Residue thereof are still remaining in his Hands or Custody, being of the Value of, &c. as the same have been appraised by two skilful and indifferent Men, the Particulars of which said Goods, Wares and Merchandizes are mentioned and expressed in the Schedule indented hereunto annexed; and the said L. R. hath also received several Debts or Sums of Money owing to the Estate of the said C. D. amounting to, &c. But the Sum of, &c. is still unreceived, the Particulars whereof are likewise mentioned and expressed in the Schedule annexed, &c. *And whereas* the several other Creditors abovenamed have claimed and do claim to be due and owing to them severally and respectively

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tively by and from the said *C. D.* the several Sums of Money amounting to, &c. the Particulars whereof are also mentioned, set down and expressed in the said Schedule indented, to these Presents annexed; and the said Creditors have made, and do by these Presents (testified by their being Parties to, and signing and sealing hereof) make it their Request, unto the said Commissioners Parties to these Presents, to order, distribute, divide and set over to and amongst them the said Creditors abovenamed, the said Goods, Wares, Merchandizes, Debts and Sums of Money in the said first Schedule indented, hereto annexed, mentioned and expressed, for and towards Payment and Satisfaction of their said respective Debts. *And whereas* the full Space of four Months since the Date and Suing forth of the said Commission is fully expired, and sufficient Notice has been given of the intended making of this present Deed of Distribution in the *Gazette*, &c. and no other Creditor or Creditors of the said *C. D.* than the Creditors above named, as Parties to these Presents, have as yet come in and sought Relief by the said Commission, or paid or contributed towards the Charge thereof, according to the Direction of the said Statutes, for any Debt or Debts due, owing or claimed to be due or owing by or from the said *C. D.* *Now this Indenture Witnesseth*, that the said Commissioners Parties to these Presents, by Force and Virtue of the said recited Commission, and of the Statutes therein mentioned, and in further Execution thereof, and to the End that a due and legal Distributi-

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## *Of Commissions of Bankrupt. 753*

on may be had and made of the said Goods, Wares, Merchandizes, Debts and Sums of Money in the said Schedule indented, hereunto annexed as aforesaid, particularly mentioned and expressed, *Have* ordered, distributed, divided, assigned and set over, and by these Presents do as much as in them the said Commissioners lieth, and they lawfully may, order, distribute, divide, assign and set over unto and amongst the said Creditors above named, Parties to these Presents, all and singular the said Goods, Wares, Merchandizes, Debts and Sums of Money above-mentioned, in Manner following, (*viz.*) to each and every of them the said Creditors above-named, a Part and Portion of the same, Share and Share alike, according to the Quantity and Proportion of his or their several and respective Debts, in the Schedule indented, hereunto annexed, mentioned and expressed, (that is to say) to the said *L. R.* the Sum of, &c. to the said *T. E.* the Sum of, &c. and to the said *L. R.* such and such Goods, &c. to the said *A. B.* &c. *To have, hold, receive and enjoy* the said Goods, Wares, Merchandizes, Debts, and Sums of Money, and every Part and Parcel thereof, unto and amongst the said Creditors, Parties to these Presents, their Executors and Administrators, as their own proper Estate for ever, for and towards Payment or Satisfaction of their said several and respective Debts, subject nevertheless to the *Proviso* or Condition following. *Provided always*, and upon and under this express Condition, and it is hereby declared to be the true Intent and Meaning of these Presents,

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and of all the Parties to the same, that all and every the Creditor and Creditors who have not already made due Proof of his and their Debts so claimed as aforesaid, before them the said Commissioners, Parties to these Presents, or the major Part of the Commissioners by the said Commission authorized, or otherwise by due Course of Law to be by them allowed of and signed in Writing under their Hands, or the Hand of one of them, if they shall neglect or refuse to make such full Proof of his or their Debts so claimed as aforesaid, within the Space of, &c. next after Notice in Writing for that Purpose shall be given to him or them, or be left at his or their House or Habitation, Lodging, or last Place or Places of Abode, that then and in such Case every such Person and Persons respectively shall be and are hereby wholly excluded and debarred out of this present Deed of Distribution, and of and from any Share, Benefit or Advantage hereby arising, or to be hereby had or made for or in Respect of his or their Debt or Debts so claimed as aforesaid, or so much thereof as shall not be duly proved and admitted of in Manner aforesaid, according to the true Intent and Meaning of these Presents; and that then and thereupon, the Part, Share and Proportion of the said Goods, Wares, Merchandizes, Debts and Sums of Money by these Presents intended to be divided and distributed, or which might or ought to have been divided or distributed among, or belonged or been paid unto such of the said Creditors so making Default of Proof as aforesaid, shall be and remain

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main, and the same is hereby distributed, divided and set over, unto and amongst such other of the abovenamed Creditors of the said *C. D.* as have already, or shall hereafter duly and fully prove their said Debts in such Manner as is herein before mentioned and appointed, any thing in these Presents contained to the contrary thereof in any wise notwithstanding. *And* all and every the said Creditors, Parties to these Presents, for themselves severally and respectively, and for their several and respective Heirs, Executors and Administrators, and not jointly or the one for the other, do and each of them doth covenant, promise, grant and agree, to and with the said Commissioners, Parties to these Presents, their respective Executors and Administrators, and to and with every of them, by these Presents, that they the said *L. R. A. B. T. E.* and the rest of the Creditors of the said *C. D.* and their respective Heirs, Executors and Administrators, shall and will from Time to Time, and at all Times hereafter, well and sufficiently save, defend, keep harmless and indemnified the said Commissioners, Parties to these Presents, and the rest of the Commissioners by the said Commission authorized and appointed, their and every of their Lands, Tenements, Goods, Chattels and Estates, and every Part thereof, of, from and against all and all Manner of Actions, Suits, Arrests, Costs, Charges, Expences, Damages and Demands whatsoever, which they or any of them shall or may suffer, sustain or be put unto for or by Reason or Means of this present Deed of Distribution,

or



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or any other Act, Matter or Thing whatsoever by them, or either or any of them, lawfully done or executed, or to be done or executed, by Virtue of the said Commission, or any of their lawful Intermedling in the Estate of the said *C. D.* by Force, Virtue or Colour thereof. *In Witness, &c.*

*A Bill in Chancery to supersede a Commission of Bankrupt.*

*To the Right Honourable, &c.*

**H***umbly sheweth, &c.* Your Orator *C. D.* of, &c. Mercer, that your said Orator for divers Years last past did use and exercise the said Trade of a Mercer in the said Parish of, &c. and also had several Dealings and Tradings with divers Persons in several Counties of *England*, whereby your Orator did gain to himself considerable Profit and Advantage, and a competent Maintenance for himself and Family, and lived very creditably in the Reputation thereof; and your Orator further sheweth, that amongst such as your Orator dealt with for Goods and Merchandizes for the carrying on his said Trade, your Orator did particularly deal with *A. B.* of, &c. and *L. R.* of, &c. who furnished your Orator with several Goods and Merchandizes, in their Way of Trade, and for which your Orator did honestly pay and satisfy them, or for the greatest Part thereof, after the same were delivered to your Orator; and some Time before, &c. which was in the Year, &c. the said *A. B.* and *L. R.* having by them in their said Way of Trade,

## *Of Commissions of Bankrupt. 757*

Trade, several Pieces and Parcels of, &c. and other filken Manufactures, and being minded to part with the same, they sent in the same unto your Orator without any particular Agreement made with them by your Orator for the Rates and Prizes thereof, and your Orator well hoped that they would afterwards have apply'd themselves to your Orator to have agreed with him for the Prices thereof, without troubling your Orator about the same with Suits in Law, or other Molestations for the same, and that they would have come to a friendly Account with your Orator, of such Monies as they had received of your Orator, &c. *But now so it is,* may it please your Lordship, that the said *A. B.* and *L. R.* confederating themselves together, and entering into a Combination with divers others, and particularly with *R. D. G. W. &c.* and Persons unknown to your Orator, they the said *A. B.* and *L. R.* in Pursuance of such their Combination, endeavouring and maliciously contriving the Ruin and Destruction of your Orator and his Family, have refused to come to an Account with your Orator for such Goods and Merchandizes as they have sold and delivered unto your Orator, and for the Monies they have received for and towards Satisfaction of the same, but have unjustly caused your Orator to be arrested and prosecuted in heavy and oppressive Actions for the same, and give out in Speeches that forasmuch as your Orator is not able to defend himself against such their Proceedings, that they will utterly ruin your Orator, and seize on all your Orator's Goods and Chattels; and for that Purpose,  
and

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and to compass such their Designs and evil Machinations, they have given out in Speeches, that your Orator is become a Bankrupt within the Intent and Meaning of the several Statutes made against Bankrupts, or some or one of them; and on such Grounds and Speeches as they have given out, and by a false and fraudulent Suggestion, that your Orator is indebted to them in great and considerable Sums of Money, they have obtained from your Lordship his Majesty's Commission under the Great Seal of *England* (grounded on the said several Statutes made against Bankrupts) against your said Orator, directed to *E. F. G. H. J. K. &c.* and under Colour thereof have prevailed with the said *E. F. G. H. J. K.* or some of them, nominated by your Lordship, as Commissioners therein, to assign unto them, or one of them, or some other in Trust for them, all your Orator's Books of Account, Notes, Receipts, Bills, Bonds and Papers, Goods, Chattels, and Personal Estate, as well those which were in the Possession of your Orator as his own proper Goods, as those which were in Trust for others, &c. and now they prosecute your Orator in several Actions at Law for the said Goods, and other Goods, pretending them all to be the Goods and Chattels of your Orator; whereas they well knew that your Orator had no Interest or Property, but a bare Possession only of great Part thereof; and altho' the said Goods which they have so seized and possessed themselves of, by Virtue of such Assignment from the said Commissioners, be of a very great and considerable



## *Of Commissions of Bankrupt. 759*

derable Value, the same being worth to be sold several hundred Pounds, yet they the said *A.B.* and *L. R.* to defeat and defraud your Orator of the same, give out in Speeches that the same are of little or no Value, and threatning to expose the same to Sale, &c. and that they will not only charge the Person of your Orator with their pretended Debts, but also for ever disable him from dealing and trading again in any Thing whereby he may get a Livelihood for himself and Family; and by such their Oppressions they have caused your Orator to be committed close Prisoner to the *Fleet*; whereas in Truth the said Confederates do very well in their Consciences know, that these their violent Proceedings against your Orator are very unjust and contrary to Equity; for your said Orator is not indebted to them but in a very small and inconsiderable Sum of Money, and such as is not within the Intent and true Meaning of the said several Statutes made concerning Bankrupts for the obtaining a Commission thereupon, nor is your Orator become a Bankrupt within the true Intent of the said Statutes, or either of them; but the said Commission hath been obtained from your Lordship by them the said Confederates upon evil and false Suggestions, your Orator not being indebted to them or either of them, on a just and fair Account, in more than the Sum of 80*l.* which would sufficiently appear if the Grounds and Pretences on which they obtained the said Commission were thoroughly examined, as in Justice and Equity they ought to be; and forasmuch as such the

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## 760 *Of Commissions of Bankrupt.*

Proceedings of the said Confederates cannot be stay'd or regulated, but by the Aid and Assistance of this Honourable Court, and he is entirely remediless therein at the Common Law, &c. *To the End therefore*, that the said Commission of Bankrupt may be *superseded*, and all Proceedings at Law against your Orator stay'd 'till the stating and settling a just Account between your Orator and the said *A. B. L. R. &c.* and that your Orator may have a true and just Account of all the Books of Account, Notes, Receipts, Bills, Bonds, and Papers, Goods, Chattels, Rights and Credits, which they the said Confederates have seised, received, had or taken, by Virtue of the said Commission, or any Agreement or Proceedings thereon; and that the said *A. B. L. R. &c.* and other the Confederates may make Restitution of the same unto your Orator, together with a Satisfaction for such their undue, illegal and unjust Proceedings against your Orator; and that the said Confederates, the better to enable your Orator to obtain a *Supersedeas* on the said Commission, may set forth and discover in what Sum or Sums of Money your Orator was *bona fide* indebted to them, or either of them at, &c. last, or any Time before their Suing forth the said Commission, and how and for what the same became due or owing to them; and may also give a just and true Account of all such Money as they or either of them have at any Time or Times received of your Orator, and for what, and may come to a fair Account with your said Orator: And that the said *A. B. &c.* may set forth and discover in what

## *Of Commissions of Bankrupt. 761.*

what Manner the said last mentioned Goods came to your Orator, and the true Values thereof, and whether the same were not damnified Goods at the Time they were delivered unto your Orator or his Use, and refus'd by your Orator, and what Contract or Agreement your Orator made with them, or either of them for the same, and when; and that they may set forth the Date of the said Commission so obtained against your Orator, and, &c. and may discover upon what Grounds and Facts they proceeded thereon, with the Times of such Facts committed, &c. And that the said Confederates may set forth and discover, &c. And that your Orator may upon a full Discovery of the whole Matter charged in this your Orator's Bill, be relieved in all and singular the Premises according to Equity and good Conscience: *May it please your Lordship* to grant unto your Orator his Majesty's most gracious Writ or Writs of *Subpoena* to be directed to the said *A. B. L. R. R. D. &c.* and such other the Confederates when discovered, thereby strictly charging and commanding them at a certain Day and under a certain Pain therein to be limited, personally to be and appear before your Lordship in this High and Honourable Court, then and there upon their several and respective corporal Oaths true Answer to make to all and singular the Premises, and that they the said Confederates may abide such Order therein as to your Lordship shall seem meet and agreeable to Equity.

*And your Orator shall ever pray, &c.*

Of



*Of Foreclosing the Equity of Redemption on Mortgages by Decree in Chancery.*

**I**N Order to foreclose the Equity of Redemption upon Mortgages, the Mortgagee, who is desirous to bar it, brings his Bill in Chancery for that Purpose, praying that the Mortgagor may either pay what is due, or be foreclosed of his Equity of Redemption; which the Court of Chancery will order and decree in convenient Time.

And though the Chancery cannot shorten the Time of Payment of the Mortgage Money, where it is limited by express Covenant and Agreement of the Parties, yet it may lengthen the same; and then, upon Nonpayment, the Practice is to foreclose the Equity of Redemption of the Mortgagor, and to make the Estate absolute in the Mortgagee. After a Bill to foreclose is filed, the Answer put in, and the usual Decree obtain'd in Favour of the Mortgagee, a Master in Chancery is to certify what is due for Principal, Interest and Costs; which is to be paid at a Time prefixed by the Decree, whereupon the Premises are to be re-conveyed to the Mortgagor; or in Default, he is to be foreclosed from all Equity of Redemption, and to convey the Premises to the Mortgagee, &c.

A Fine and Non-claim will bar Equity of Redemption; and where the Equity of Redemption may be forfeited, by the Mortgagor's Making a second Mortgage of the same Lands,

*Equity on Mortgages, &c.* 763

without discovering the first Mortgage, *vide*  
*Stat. 4 & 5 W. & M. c. 16.*

*A Bill to foreclose Equity of Redemption.*

**H**umbly complaining sheweth unto your Lordship, your Orator *A. B.* of, &c. That *whereas* *C. D.* of, &c. having Occasion for Money did on or about, &c. in the Year, &c. borrow and take up at Interest of your Orator the Sum of 2000 *l.* and for securing the Repayment thereof with Interest, in and by one Indenture bearing Date, &c. made between the said *C. D.* of the one Part, and your Orator the said *A. B.* of the other Part, did demise, grant, &c. unto your Orator, all that Messuage, Tenement or Farm called, &c. and all those Lands lying and being, &c. in the Possession of, &c. *To hold* the said Messuage, Tenement, or Farm Lands and Premises unto your said Orator, his Executors, Administrators and Assigns, for the Term of 500 Years, &c. as in and by the said Indenture of Mortgage in your Orator's Custody ready to be produc'd, will more fully appear: And your Orator further sheweth unto your Lordship, that the said *C. D.* hath not only failed in Payment of the said 2000 *l.* but hath suffer'd the Interest thereof ever since to run greatly in Arrear, although your Orator hath often requested and desired him to pay the said Principal Money, or at least the Interest thereof, as the same became due, which in all Equity he ought to have done. *But now so it is,* may it please your Lordship, that the said *C. D.* hath

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hitherto

hitherto altogether neglected to pay to your Orator either the principal Money or the Interest, and endeavoured to delay your Orator all he can by fair Promises, wherewith your Orator having been put off a long Time, intended to have actually enter'd on the said mortgaged Premises, and to have recovered the Possession thereof at Common Law; but upon Inquiry your Orator finds, that all or the greatest Part of the said mortgaged Premises have been leased out by the said *C. D.* precedent to your Orator's Title for long Terms, either absolute or determinable upon Lives, under small Rents, to sundry Persons to your Orator unknown, (whose Names, when discover'd, your Orator prays may be made Parties to this Suit with apt Words to charge them) so that your Orator cannot bring any Action or Suit at Law for Recovery of the Possession of the said mortgaged Premises, yet well hoped he might have received the Rents and Profits thereof towards the Satisfaction of his said Debt and Interest; and the said *C. D.* having the Counterparts of the several Leases in his own Custody, refuses to discover upon what Terms and under what Rents the same were granted, or when payable, intending as much as in him lies to defeat your Orator of his said Debt and Interest; and doth not only refuse to pay your said Orator the said principal Sum of 2000*l.* or any Interest therefore, but hath also prevailed with the several Tenants of the said mortgaged Premises not to attorn Tenants to your Orator, or to pay him any Rents due or payable to the same; and your

Orator



Orator not having any Counterparts of the several Leases, is thereby disabled to bring any Action to recover the several Rents, or any Part of them, whereby your Orator is likely to be totally deprived of his just Debt, without the Aid and Assistance of your Lordship in this Honourable Court: *In tender Consideration* whereof, and forasmuch as your Orator hath no Remedy at Law to get the Possession of the said Premises, or to compel the several Tenants to attorn Tenants to your Orator to pay him their respective Rents as the same shall become due; or to enforce the Payment of the said Debt and Interest, or to foreclose the said *C.D.* of his Equity of Redemption of the said mortgaged Premises but in this Honourable Court; and the rather for that the said *C.D.* gives out, that if your Orator should be admitted into the Possession, or into the Receipt of the Rents and Profits thereof, yet that your Orator shall be but in the Nature of a Bailiff, for that he can call your Orator to Account at Pleasure. *To the End therefore*, that the said *C.D.* and the rest of the Confederates, when discover'd, may true and perfect Answer make to all and singular the said Premises, and particularly that the said *C.D.* may discover whether he did not borrow of your Orator the said Sum of 2000 *l.* and whether such Security was not made and duly executed, as the same is herein before set forth, for Securing the Repayment thereof with Interest; and whether the said Sum of 2000 *l.* and all the Interest thereof ever since the Day, &c. doth not remain due and owing to your Orator,

or how much thereof is yet owing; and that the said *C. D.* may also set forth and discover what Leases or other Incumbrances have been granted on, or affect the said Premises, or any Part thereof, and may set forth the Dates and Contents of such Leases and Incumbrances respectively, and by whom made, upon what Terms, for what Consideration, and under what Rents, and may be order'd to deliver the Counterparts of the said several Leases to your Orator, to enable him to recover the several Rents due thereupon; and that the said several Tenants may be ordered and decreed to attorn Tenants to your Orator, and pay your Orator their respective Rents, as they shall become due; and to the End the said *C. D.* may be decreed to pay your Orator his Principal and Interest with his Costs by a certain Day to be prefixed by this Honourable Court, or in Default thereof that your Orator may by Decree of this Court hold and enjoy all and singular the said mortgaged Premises, freed and discharged of all Equity, Power and Benefit of Redemption, which the said *C. D.* or any Person claiming by, from, or under him, may or might challenge, or claim to have of, in, or to the said Premises, or any Part thereof; and also that the said *C. D.* may by the Decree of this Court be wholly foreclosed and excluded from all Equity of Redemption of the said mortgaged Premises, and may be ordered to make farther Assurance of the same Premises to your Orator, his Executors and Assigns; and that your Orator may be further reliev'd in the Premises according to Equity

*Equity on Mortgages, &c.* 767

ty and good Conscience; *May it please your Lordship*, the Premisses consider'd, to grant to your Orator his Majesty's most gracious Writ of *Subpœna* to be directed to the said *C. D.* and, &c. commanding them to appear, &c. to answer all and singular the Premisses, and further to stand to, perform and abide such Order, Direction and Decree therein, as to your Lordship shall seem meet.

*And your Orator shall ever pray, &c.*

*A Plea and Answer to a Bill for Redemption of Lands mortgaged, in Bar thereto, &c.*

**T**HE Defendant by Protestation not confessing or acknowledging all or any of the Matters or Things, in the said Complainant's Bill of Complaint contained, to be true, in such Manner as the same are thereby set forth and alledged; as to so much thereof as seeks the Redemption of the Lands and Tenements herein after mentioned, or to have an Account of the Profits, or to be otherwise relieved touching the same, and to all other the Matters and Things in the said Complainant's Bill contained, and not herein after answered unto, this Defendant doth plead in Bar thereto, and for Plea saith, That the Complainant on or about, &c. in the Year, &c. being possessed and interested of and in all that Messuage or Tenement called, &c. for and during all the rest and Residue of a Term of, &c. then to come and unexpired, held by Lease from *E. F.* bearing Date, &c. he the said Complainant in and by one Indenture

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bearing



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bearing Date, &c. in Consideration of the Sum of, &c. to him the said Complainant in Hand paid by G. H. of, &c. did grant, bargain, sell and assign the said Premisses, and all his Estate and Interest therein, to the said G. H. his Executors, Administrators and Assigns; but with a Proviso therein contained for making the same void, in Case the Complainant should pay to the said G. H. the said, &c. with the Interest thereof, on the Day of, &c. then next coming, as in and by the said Indenture may more fully appear. And this Defendant for further Plea saith, that by Indenture bearing Date, &c. had and made between the Complainant and the said G. H. of the one Part, and J. K. of, &c. of the other Part, reciting, &c. and that the Tenements in Question were by good Ways and Means in the Law come to, and vested in the Complainant, &c. in Consideration of the Sum of, &c. paid to the Complainant, and of, &c. paid to the said G. H. the Complainant, and the said G. H. did grant, bargain, sell and assign to the said J. K. his Executors, Administrators and Assigns, the Tenement and Premisses aforesaid, and all their Estate, Term, and Interest therein; in which last Indenture there is also a Proviso, that if the Complainant should pay to the said J. K. &c. then next following, then the said J. K. was to reconvey the said Premisses to the said Complainant, as by the said last Indenture may more fully appear. And this Defendant for further Plea saith, that by an Indorsement or Deed indorsed on the Back of the said last Indenture dated, &c. the said J. K. in Consideration

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tion of, &c. to him by this Defendant *bona fide* paid, by and with the Consent and Agreement of the said Complainant, he the said J. K. did likewise by the Complainant's Consent assign the said Premises in the original Indenture particularly mentioned, and all his Estate, Term and Interest therein to him this Defendant; and that in and by one Indenture of Defeazance bearing Date, &c. made between this Defendant of the one Part, and the Complainant of the other Part, reciting the said last Indorsement, he this Defendant did thereby signify and declare, and did also covenant with the Complainant, that if the Complainant should pay to this Defendant, &c. in and upon, &c. then next coming, that then this Defendant would reconvey the said Premises unto the Complainant, as in and by the said Indorsement and last recited Indenture may more fully appear. And this Defendant for further Plea saith, that the Complainant failed in Payment of the said, &c. and thereupon this Defendant enter'd into and upon the said Premises, and became possessed thereof; and afterwards, *to wit*, on or about, &c. the said Complainant by Indorsement, or Deed indorsed on the Backside of the said last Indenture of Defeazance, bearing Date, &c. in Consideration of the Sum of, &c. to him in Hand paid by this Defendant, did absolutely remise and release to this Defendant, his Executors, Administrators and Assigns, the Covenants in the said Indenture of Defeazance contained, and all Benefit and Equity of Redemption of the Tenements therein mentioned, and all his Estate,

Right, Title, Interest, Claim and Demand, as well in Equity as in Law, of, in and to the same; to have and to hold the said Premises with the Appurtenances unto the said Defendant, his Executors, Administrators and Assigns, for and during the Remainder of his Term and Interest therein, discharged and free from all Benefit and Equity of Redemption whatsoever, as in and by the said last recited Release may more fully appear. And this Defendant by Way of Plea further saith, that immediately after the Sealing and Executing the said last Deed by the Complainant, he this Defendant became a real and absolute Purchaser of the said Premises for a valuable Consideration, and hath ever since quietly enjoyed the same, and is well intitled thereunto, and doth insist that he hath a good, absolute and indefeasible Estate therein, during the Continuance of the said Estate for Years determinable as aforesaid; and that he is not accountable for the Rents and Profits unto the Plaintiff, and that he ought to retain the Deeds and Evidences which concern the said Premises, for the Maintenance of his Title thereunto; and therefore this Defendant pleads the said Matters in Bar to such Part and so much of the said Bill as seeks to be relieved against the said Purchase, or any Discovery of the Writings touching or concerning the same as aforesaid, and humbly demands the Judgment of this Honourable Court, whether he shall be compelled to make any other Answer to such Part of the said Complainant's Bill as aforesaid; and for Answer to so much of the said Bill as is not  
above



above pleaded unto, he this Defendant saith, he knows not that the Complainant was possessed of any Tenements or Hereditaments whatsoever, other than the Premises in this Defendant's Plea mentioned, and saith, he claims no other Estate, nor hath or knows of any Deeds, Evidences or Writings belonging to the Plaintiff, save only such as concern the Premises, as in the Defendant's Plea is mentioned; and this Defendant denies the said Premises are of the yearly Value in the Plaintiff's Bill mentioned, or of any greater yearly Value than, *&c. per Annum*; and he this Defendant doth verily believe that the said Money paid by this Defendant for the said Premises, was a full and valuable Consideration for the same at the Time of the Purchase made; and this Defendant also denies, that he ever made any other Covenant or Agreement with the Complainant, or any other Person whatsoever, touching or concerning the Redemption of the said Premises, but what is mentioned in this Defendant's Plea; and this Defendant denies all Combination in the Complainant's Bill charged, *&c. Without that, that, &c.*

*A Release of Equity of Redemption of Lands, made in Pursuance of a Decree in Chancery, &c.*

**T**HIS Indenture made, *&c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part. Whereas by Indenture bearing Date, &c. made between the said A. B. of the*  
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one Part, and the said *C. D.* of the other Part, he the said *A. B.* for the Considerations therein mentioned, did demise, grant, bargain and sell unto the said *C. D.* *All* that Messuage or Tenement lying and being, &c. and also all that, &c. then in the Tenure of, &c. and all Ways, Waters, Water-courses, Common of Pasture, Hereditaments, Profits, Easements and Appurtenances whatsoever to the said Premises belonging, or in any wise appertaining, or therewith used, occupied or enjoyed, reputed and taken as Part, Parcel or Member thereof, or any Part thereof; and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits of all and singular the above-mentioned Premises, and of every Part and Parcel thereof, and all Rents and other Profits reserved, or from thenceforth payable upon any Lease or Leases thereof, or of any Part thereof; and all the Estate, Right, Title, Interest, Property, Claim and Demand whatsoever, either in Law or Equity, of him the said *A. B.* of, in, or to all or any of the said Premises, or of, in, or to any Part or Parcel thereof, with their and every of their Appurtenances: *To be had and holden* unto the said *C. D.* his Executors, Administrators and Assigns, from the Day before the Day of the Date of the said Indenture, for and during and unto the full End and Term of 100 Years from thence next ensuing and fully to be compleat and ended, without Impeachment of, or for any Manner of Waste; at and under the yearly Rent of one Pepper Corn, payable on, &c. if demanded: In which said Indenture is contained a Proviso or Condition nevertheless,

vertheless, That if the said *A. B.* his Heirs, Executors and Administrators, or any of them, should pay, or cause to be paid, unto the said *C. D.* his Executors, Administrators or Assigns, the Sum of, &c. with lawful Interest for the same, at certain Days and Times in the said Indenture mentioned, that then the said Indenture should be void, as in and by the said recited Indenture (Relation being thereunto had) more at large appears. *And whereas* the said Sum of, &c. nor any Part thereof, or any Interest for the same, was not paid at the Times appointed for the Payment thereof, nor at any Time since; whereupon the said *C. D.* exhibited his Bill into the High Court of Chancery against the said *A. B.* thereby praying that the said *A. B.* might be decreed to pay the Mortgage Money and Interest unto the said *C. D.* or that he might be debarred and foreclosed of all Equity of Redemption of the mortgaged Premises; to which Bill the said *A. B.* appeared and answered, &c. *And whereas* by a Decree, or decretal Order, made in the said High Court of Chancery, between the said *C. D.* Complainant and the said *A. B.* Defendant, bearing Date, &c. It was ordered and decreed, That upon the said *A. B.*'s Payment of what, &c. one of the Masters of the said Court should certify to be due to the said *C. D.* for Principal, Interest and Costs, by the Day, &c. then next, the said *C. D.* should reconvey the said mortgaged Premises to the said *A. B.* or to whom he should appoint, free of all Incumbrances done by him, or any claiming by, from, or under him: But in Default of the said *A. B.*'s Payment of what the said



said Master should certify to be due to the said *C. D.* for Principal, Interest and Costs as aforesaid, then it was ordered and decreed, that the said *A. B.* should be absolutely foreclosed and debarred from all Equity of Redemption; and deliver upon Oath all Deeds and Writings that he had or could come by, that related to the Premises; and also convey all the Right, Title and Interest which he had in the Premises unto the said *C. D.* in such Manner as the said Master should direct. *And whereas* the said Master, in Pursuance of the said decretal Order, made his Report, bearing Date, &c. last past, whereby he certified that there was due to the said *C. D.* the Sum of, &c. and also appointed the said *A. B.* to pay the same unto him on, &c. last, as by the said decretal Order and Report more at large appears, *And whereas* the said *A. B.* hath not paid the said Sum of, &c. or any Part thereof unto the said *C. D.* according to the said Order and Report. *Now this Indenture witnesseth*, That the said *A. B.* in Obedience to and Pursuance of the said Decree, and for and in Consideration of the Sum of 5 s. to him in Hand paid by the said *C. D.* the Receipt whereof he doth hereby acknowledge, *hath* granted, released and confirmed, and by these Presents doth grant, release, &c. unto the said *C. D.* his Executors, Administrators and Assigns, the said Messuage or Tenement, Lands and Premises above-mentioned, with their and every of their Rights, Members and Appurtenances, and the Reversion and Reversions, Remainder and Remainders thereof, and also all the Estate, Right, Title and Interest both in Law and Equity of the said *A. B.* in and to the same

same and every Part and Parcel thereof, together with all Deeds, Evidences and Writings touching and concerning the said Premises only, and true Copies of all such as concern the same, with other Lands, &c. *To have and to hold* the said Messuage or Tenement, Lands and Premises, with the Appurtenances, and all and singular other the Premises hereby granted and released, or meant, mentioned or intended to be hereby granted and released, unto the said *C. D.* his Executors, Administrators and Assigns, from henceforth for and during all the Rest and Residue of the said Term of 100 Years yet to come, absolutely foreclosed and debarred of and from the Proviso for Redemption in the said recited Indenture mentioned, and from all Benefit and Equity of Redemption whatsoever. *And* the said *A. B.* for himself, his Heirs, Executors and Administrators, doth covenant and grant to and with the said *C. D.* his Executors, Administrators and Assigns by these Presents, That he the said *A. B.* and his Heirs, shall and will, at the Request, Costs and Charges in the Law of the said *C. D.* his Executors, Administrators or Assigns, from Time to Time, and at all Times hereafter, during the Space of seven Years next ensuing, make, do and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable Act and Acts, Thing and Things, Assurance and Assurances in the Law whatsoever, for the further and better conveying and assuring of the said Premises to the said *C. D.* his Executors, Administrators and Assigns, as by the said *C. D.* his Executors, Administrators or Assigns shall be devised, advised and required. *In Witness, &c.*

*Some*

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*Some extraordinary adjudg'd Cases in Chancery, abridg'd from Modern Reports in Alphabetical Order.*

**I** Shall conclude this Treatise of the Practise of the Court of Chancery with Variety of *Chancery Cases*, reported by the best Authorities and determined by our greatest Chancellors, from the Beginning of the Reign of K. *Charles I.* to the Year 1720.

### *Of Abatement.*

After a Bill, and before a Decree, if the Plaintiff being a Feme marries, or the Plaintiff or Defendant dies, the Bill and all the Proceedings thereon shall abate; so that there is no Bill or Cause depending in Court. 1 *Chan. Rep.* 232.

### *Of Accounts.*

After twenty Years Time a Defendant shall be allow'd to prove his Account by his own Oath, for what he cannot otherwise prove by Books, &c. 1 *Ch. Rep.* 146. An Accountant is to be allowed Sums under 40 s. on his Oath; but then he must Mention in his Affidavit to whom paid, for what, and when: Tho' the Court being inform'd, that the usual Course was that an *Accountant* was to be allowed on his own Oath all Sums not exceeding 40 s. so as the



the Whole was not above 100 l. declared that Rule to be unreasonable. 1 *Vernon's Rep.* 283, 470.

An Account stated and balanced, and no Objection made to it in seven Years, shall stand and not be again inspected. *Finch's Chan. Rep.* 66. And where there is a Decree for a mutual Account, the Plaintiff on his own Bill may be decreed to pay the Balance. 2 *Vern. Rep.* 297.

### Of Administrators.

An Administrator, or Executor, may be sued in Chancery for an Account, and also at the same Time in the Prerogative Court to produce an Inventory. 3 *Chan. Rep.* 72. But where an Administration is repealed and granted to another Person, to whom the first Administrator accounts in the Spiritual Court, such Administrator is discharged from any further Account. *Finch. Chan. Rep.* 123.

If an Administrator pays a Debt by Bond, before a Debt due by Decree, having no Notice of the Decree, this is a Mis-payment, and the Administrator must pay the Debt by the Decree, altho' he hath fully administered the Assets. 2 *Vern. Rep.* 88, 89.

### Of Alimony.

A Decree was made for Alimony *quousque Habitation.* and the Husband after exhibited his Bill, and offered to cohabit, praying that the Alimony might cease: The Court in this Case cannot

## 778 *Of Cases in the Chancery,*

cannot discharge Arrears, &c. But the Alimony shall not be continued to the Wife, if she will not cohabit; nor shall the Sentence for Alimony be discharged, but suspended, so as to be laid on again if the Husband misuses the Wife, or do not maintain her as he ought. 1 *Chan. Cas.* 250.

It is said that no Alimony can be decreed but by Consent, unless there was first a Decree for Separation. 1 *Chan. Cas.* Yet Alimony hath been decreed for all the Time the Wife departed from her Husband, and also the Benefit of a Bond given before Marriage. 1 *Chan. Rep.* 44. There may be a Bill to establish an Agreement for a separate Maintenance of a married Woman; and such Woman saving Money out of her Estate, she may dispose thereof. 1 *Vern. Rep.* 204, 245.

A Woman living from her Husband, and having a separate Maintenance, contracts Debts; the Creditors by Bill in Equity may follow the separate Maintenance whilst it continues, but not charge her Jointure after that is determined. 1 *Vern.* 326.

### *Of Annuities.*

Annuities void in Law, by Reason of the Incertainty of the *Habendum*, are good in Equity to bind the Grantors; who were decreed to pay the same with the Arrears. 1 *Ch. Rep.* 8.

But if an Annuity be granted, without a valuable Consideration to induce the Court to set up

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up and make good the Grant in Equity, no Relief shall be had here. 1 *Ch. Rep.* 148.

*Of Answers.*

A dumb Man was ordered to answer in this Court; so he may be examined on Interrogatories, for he may signify his Assent or Dissent by Signs: But a Man both deaf and dumb was ordered not to answer; because he cannot hear, and by Consequence not understand Questions asked, &c. 1 *Chan. Cas.* 153. Ideots so found, may answer by the King's Attorney, &c. and Lunaticks generally sue and answer by their Committees.

*Of Apprentices.*

Indentures of Apprenticeship may be decreed in Equity to be delivered up, and the Money given with the Apprentice to be paid back by the Master, on the Apprentice's being oppress'd and ill used. *Finch Rep.* 125.

*Of Articles of Agreement.*

Equity will not decree an Execution of Articles, but when obtained fairly, without Surprise or Circumvention: And where an Estate pretended to be bought for one, is bought for another, at an under Rate; the Execution of these Articles shall not be decreed. 1 *Vern. Rep.* 227, 229.



## 780 *Of Cases in the Chancery,*

An underhand Agreement to defeat Articles on Marriage, was set aside as fraudulent. 1 *Vern.* 475. And Articles of Agreement upon Marriage reduc'd into Writing, tho' not signed by either Party, being proved to be agreed to, were decreed to be performed. 2 *Vern. Rep.* 200.

A Jointure being made in Pursuance of Articles, wherein was a Covenant that the Lands were of such a Value; tho' this Covenant was left out in the Settlement, yet it was held to be subsisting, and decreed to be perform'd. 1 *Vern. Rep.* 217, 218. Altho' a Settlement actually made, is an Evidence that all Parol Agreements, relating to the Marriage, were resolved into that. *Ibid.* 369.

An Agreement in Writing made since the Statute of Frauds, has been decreed to be discharg'd by Parol. 1 *Vern.* 240.

### *Of Assets.*

Leases are Assets to pay Debts, notwithstanding the Assent of the Executor to the Devise of them. 1 *Chan. Cas.* 257. And the Testator's Estate, into whose Hands soever it comes, is liable in Equity. 2 *Chan. Cas.* 57. But Money agreed on Marriage to be invested in Lands, &c. is not Assets to satisfy a Creditor, but bound by the Articles. 1 *Vern. Rep.* 471.

The legal Assets shall be apply'd in a Course of Administration; but equitable Assets amongst all the Creditors proportionably, on a Bill brought by Creditors, &c. 2 *Vern. Rep.* 62. If an Estate is devis'd in Trust to a Stranger, for Pay-

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Payment of Debts, all Debts shall be paid equally; but if the Devisee is Executor, then the Land is legal Assets, and Debts must be paid according to their Precedency at Common Law.

1 *Vern. Rep.* 65. An Executor being desirous to apply the Assets as far as they would go, brought a Bill against all the Creditors, that they might contest each other's Debts, and their Preference in Payment be settled; and it was adjudged a proper Bill on Demurrer. 2 *Vern.* 37.

By the Statute of Frauds and Perjuries, the Trust of a Fee and the Inheritance is made Assets; and the Trust of a Term is not. *Ibid.* 248.

### *Of Awards.*

A defective Award as to Lands, &c. was allowed in the Chancery to be explained by the Arbitrators, and the Award and Explanation decreed. 1 *Ch. Rep.* 86. Also a voluntary Award, being in Part executed and assented to, tho' no Reference was directed by this Court, decreed to be confirmed and performed. 2 *Ch. Rep.* 364. An Award was set aside, and the Plaintiff relieved, where too great Damages were awarded against him. 3 *Ch. Rep.* 76.

Where there appears to be a manifest Error in the Body of an Award, in some Cases Equity will give Relief against it: Not where no Error appears without unravelling it, and examining Matters of Account, &c. 1 *Vern. Rep.* 158, 159. If Arbitrators appear to be any Ways interested in a Thing awarded; or have private Meetings with one of the Parties, whereby he is admitted

## 782 *Of Cases in the Chancery,*

to be heard to induce an Alteration in the intended Award; or if the Arbitrators go upon a plain Mistake, either as to Law or Fact, &c. the Award shall be annull'd and made void in Equity. 2 *Vern. Rep.* 251, 515, 705.

An Award is made a Rule of Court according to the Submission, and Attachment taken out for not obeying the Award, and then the Party, against whom the Attachment issues, dies; by the Party's Death, the Attachment is gone as in other Cases, and the Remedy lost. 2 *Vern.* 444.

## *Of Bargains and Sales.*

**A** Bargain and Sale of an excessive Value, gained from a young Heir apparent by Fraud, in his Necessity, shall be set aside. But if such an Heir sells Lands in his Father's Lifetime, and receives the Purchase-money, he shall make good the Sale after his Father's Death. 2 *Chan. Cas.* 113, 120. Not a Reversion sold under Value, &c. 1 *Vern. Rep.* 271. 2 *Vern.* 168.

## *Of Baron and Feme.*

The Husband and Wife must ordinarily join in Suits in Equity, for Things in Right of the Wife, in like Manner as at Law: 'Tho' sometimes the Wife by her *Prochein Amy*, or next Friend



Friend, sues her Husband in the Chancery; and sometimes she petitions against him, or sues him in this Court for Alimony, when he turns her away, &c. Also a Feme Covert hath been allowed to sue here in her own Name, when her Husband was beyond Sea; and so where a Husband released the Wife's Debt, &c. 1 *Chan. Rep.* 68. A Wife whose Husband is by Act of Parliament banished for Life, may make a Will, and in all Things act as a Feme Sole, and as if the Husband was dead. 2 *Vern. Rep.* 105.

A Feme Covert, who had no Maintenance from her Husband, but she maintained him, hath been decreed to give and dispose of what she had got by her own Industry and Labour, as a Feme Sole. *Finch Rep.* 56. If there be a Devise of a Power to a Feme Sole to grant an Annuity, and she takes Husband; she is not thereby devested of the Power, nor is the same placed in the Husband. *Finch* 346.

If a Feme Sole being possessed of a Term, granteth it over, or a Term is granted by another to her Use, and then she taketh Husband and dieth; in this Case the Court ruled it to go to the Executor or Administrator of the Wife, and not to the surviving Husband. 1 *Chan. Cas.* A Man marries a Woman entitled to a Mortgage in Fee, this Mortgage is a Chose in Action, and the Husband hath no absolute Power to assign the Benefit of it, only to reduce it into Possession; and if he doth not that, the Wife surviving, it shall go to her Executor. 2 *Vern. Rep.* 402. But a Term assign'd by the first Husband for the separate Use of the Wife, 'tis said may

## 784 *Of Cases in the Chancery,*

be sold or disposed of by a second Husband; and the Wife and her Trustees be compelled to assign the legal Estate. 2 *Vern. Rep.* 270, 271.

An Agreement made by a Baron with a Feme, concerning Lands, &c. is extinguished by the Marriage, and the Wife not relievable. 3 *Ch. Rep.* 8. But where such Agreement is good in Equity, *vide* Marriage.

### *Of Bills.*

A Bill in Equity to supply a Defect in a Settlement of Lands on a Plaintiff, the better to enable him to pay his Debts; the Cause coming on upon Bill and Answer, the Court would make no Decree without a Replication and Proofs. *Finch's Chan. Rep.* 415. A Bill filed and a *Subpæna* serv'd, is a *Lis pendens* against all Persons; but the Service of a *Subpæna*, without a Bill's being actually filed, is not. 1 *Vern. Rep.* 318.

*Bill of Appeal* lies not in the Chancery from a Decree in a *County Palatine*: But a *Certiorari* Bill may be brought to remove a Cause out of a Court of Equity in a *County Palatine* to this Court. 1 *Vern.* 178, 184.

### *Of Bonds.*

An Accident or Fraud in the Writing of a Bond, hath been relieved in Chancery; as where the Writer had left out one of the Obligor's Names, but his Hand and Seal was to the Bond, which was adjudg'd sufficient Evidence. 3 *Chan. Rep.*

*Rep.* 100, 101. A Bond taken away fraudulently and cancell'd, the Party shall have as much Benefit by it as if it had not been cancelled.

*Finch Chan. Rep.* 184.

A Bond where neither the Principal nor Interest hath been demanded in 20 or 30 Years, will be presumed in Equity to be satisfy'd, and be decreed to be delivered up and cancelled.

*1 Ch. Rep.* 79. And a perpetual Injunction may be granted to stay Proceedings thereon. *Finch's Rep.* 78.

Relief will be given in Equity against the Penalty of a Bond: On a Bond for Performance of Covenants, &c. the Party Obligee shall have no more in Equity than he is really damnified by the Breach of Covenants; but at Law the whole Penalty of the Bond shall be recovered.

*2 Chan. Rep.* 199.

If a Bond be drawn in common Form for Payment of Money; but proved to be made on an Agreement that the Obligor should marry such a Person, or by Way of Forfeiture pay the Money due on the Bond; The Court will relieve against this Bond, as Marriage ought to be free and without Compulsion. *2 Vern. Rep.* 102.

A Bond of a Widow to pay 100*l.* if she married again, decreed to be delivered up. *Ibid.* 216.

A Person gives Bond to his House-keeper for secret Service, Equity will not relieve him: If a Man gives a Bond to a Woman whom he keeps for a Mistress, for a certain Sum of Money, this is as a free Gift, and no Relief can be had against the Bond; unless it can be made



## 786 *Of Cases in the Chancery,*

appear, that the Woman was a common Strumpet, and used to draw in young Gentlemen, &c. which must be charged in the Bill. 1 *Vern. Rep.* 484. 2 *Vern.* 242.

Bond of a Person, not to permit his Mother to come into his House, &c. was decreed to be set aside as an unnatural Bond. 1 *Vern.* 414.

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### *Of the Chancery.*

THE Chancery is the highest Court of Equity; and may send Injunctions to the Court of *Exchequer*, &c. 1 *Vern. Rep.* 221.  
Vide *Bill of Appeal*.

### *Of Charities.*

A Devise of a Charity, tho' not good at Law, by Reason of the Misnaming of the Devisee, &c. is a good Limitation in Equity within the Statute of Charitable Uses. *Finch Chan. Rep.* 221.

Preference is given to Charitable Legacies beyond all other Legacies: And where a Charity is void in its Disposition, it ought to be apply'd to something *ejusdem generis*. 1 *Vern. Rep.* 230, 251. An Appointment by Tenant in Tail to a Charity, shall bind the Reversioner in Fee; and the Stat. of Charitable Uses supplies all Defects of Assurance, where the Donor is of Capacity to dispose. 2 *Vern. Rep.* 755.

A Cor-

A Corporation for a Charity are but Trustees, and may improve the Charity, but cannot do any Thing to the Prejudice thereof, or in Breach of the Rules of the Founder. 2 *Vern. Rep.* 412. No Agreement of the Parishioners, where a Charity is given to a certain Use, can alter or divert it to other Uses: Nor may the Consent of the Heir alter the Disposition of a Charity made by his Ancestor, which ought to be observed according to the Letter. 1 *Vern.* 42, 56.

Charity Lands being let at a great Under-value, as was found by Inquisition, upon a Commission of Charitable Uses, the Lease was set aside in Equity; and the Lessee decreed to pay the Arrears of Rent, according to the full Value of the Land, and to deliver up the Possession. 2 *Vern.* 415.

*Of Conditions.*

Equity relieves against Breaches of Conditions, &c. and generally it is sufficient if the Intent and Substance of a Condition is perform'd, tho' it be not literally done. But precedent Conditions must be literally perform'd, and there is a great Difference between a Condition precedent and subsequent: In all Cases where the Matter of the Condition lies in Compensation, be the Condition precedent or subsequent, there ought to be Relief. 1 *Vern. Rep.* 83, 223.

The Chancery will relieve to prevent the De-vesting of an Estate on a Condition precedent; but not to give an Estate that never vested: If  
Lands

## 788 *Of Cases in the Chancery,*

Lands are given upon Condition of paying Money at a certain Time; the Court may enlarge the Time of Payment; and the Court will dispense with the Time of Payment, even in the Case of Conditions precedent. 2 *Vern.* 222, 339.

### *Of Contracts and Covenants.*

On a Contract for the Purchase of Lands, the Purchaser hath an Equity to recover the Land, and the Vendor stands as a Trustee for the Purchaser 'till a Conveyance is executed: Also it has been held, That upon a Contract only for Lands, the Estate and Use is vested in Equity. 3 *Ch. Rep.* 5. A Covenant where it evidently appears to be contrary to the Intention of the Covenantor, and it is contradicted by other Covenants, the Covenantor shall be relieved. *Finch Rep.* 90.

### *Of Copyhold Estates.*

A defective Surrender of a Copyhold Estate, devised as a Provision for younger Children, supplied in Equity: So the Want of a Surrender, hath been supply'd. And the Want of a Surrender was supplied where a Person had a long Possession of a Copyhold, as for forty Years, &c. under a Will, a Surrender being presumed. 1 *Vern. Rep.* 132, 195. 1 *Ch. Rep.* 108. 2 *Ch. Rep.* 129.

Bill in Chancery will not lie to compel the Lord of a Manor to permit a Plaint to be brought in the Lord's Court to reverse an erroneous Common Recovery suffered there, and to be relieved thereon. 1 *Vern.* 367.

But



But a Bill may be brought to establish the Customs of a Copyhold Manor by Decree of this Court. *Finch Rep.* 263.

### Of Costs.

Where the Court is satisfy'd, that the Plaintiff hath good Ground to bring his Suit in Chancery for Relief, &c. and it is a hard Case upon the Plaintiff, he shall pay no Costs at Law, or in this Court. 2 *Chan. Rep.* 172.

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### Of Damages.

IT has been insisted, that the Court of Chancery cannot assess Damages for a Trespass, &c. which ought to be ascertained by a Jury at Law, and not otherwise. 1 *Ch. Rep.* 230. This Court would not ascertain Damages recovered for Breach of Covenant; but ordered the Parties to Law thereon. 2 *Ch. Rep.* 63.

### Of Debts.

Debts upon Bond, and simple Contracts, being charged on Lands for Payment, shall be paid in equal Proportion; but otherwise it is in case of Debts on Judgment, that in their own Nature charge the Lands. 3 *Ch. Rep.* 12.

Mort-

## 790 *Of Cases in the Chancery,*

Mortgage Debts have been decreed to be paid in the first Place, before Judgments, Recognizances, &c. But on Appeal to the House of Lords, it was adjudg'd, That Debts on Mortgages, Judgments, Statutes and Recognizances, should take Place and be paid according to Priority of Time; and that Mortgages were not to be preferred to other real Incumbrances. 1 *Vern. Rep.* 525.

Debt by a Decree shall precede Debts on Bonds, &c. and be paid next to Judgments. 1 *Vern.* 143.

### *Of Decrees.*

A Decree in Chancery is as effectual to charge the Person, as an Execution at Law: And being for Money or other personal Thing, is a Judgment in Equity, and like a Judgment for Debt or Damages at Law. 2 *Ch. Rep.* 193. 1 *Ch. Rep.* 234.

The Defendant in a Suit was committed to the Fleet Prison for not performing a Decree, and the Plaintiff put in Possession of his Lands on a Sequestration, upon which the Defendant pleaded it was a double Execution; but it was ordered, that he should not be discharg'd, until the Lands were assured to the Plaintiff, or the Money lent on Security thereof was satisfied, &c. 1 *Ch. Rep.* 152, 153.

Decrees of the Chancery take Effect from the Time they are pronounc'd; and a Decree may supply an Omission in Ingrossing a Deed, &c. also

Livery

Livery of Seisin omitted on a Feoffment of Lands, in some Cases. *Finch Rep.* 169, 172, 174.

*Of Deeds.*

The Contents of Deeds are not to be proved by Witnesses, only the Fact touching the Execution; and the Construction of Deeds is the Office of the Court. 3 *Ch. Rep.* 94.

A Deed appearing to be cancelled, was decreed to be a good Deed; and that the Cancelling should not devert the Estate out of Trustees. 2 *Ch. Rep.* 100. 1 *Chan. Cas.* 249. A Wife recovered her Jointure, by Virtue of a Settlement which was cancelled, found after her Husband's Death among his Papers: Both these Cases were adjudg'd on special Circumstances. 2 *Vern. Rep.* 476. And a Defendant having suppressed a Deed of Settlement, whereby a Remainder in Tail was limited over, upon Proof that the Deed came to his Hands, the Plaintiff was decreed to enjoy the Estate. *Ibid.* 380.

Where a Lease of Lands by Deed is lost or mislaid, the Landlord may sue for the Rent and declare on a Demise in general, without saying it was by Deed in Writing. 2 *Vern.* 98.

*Of Distress.*

Rent, tho' not distrainable at Law, ordered to be paid in Equity. 1 *Ch. Rep.* 5, 6.

A Gra-



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A Grazier's Cattle driving to *London* were distrained in Grounds belonging to an Inn for the Inn-keeper's Rent, and in *Replevin* the Landlord had Judgment at Law; but the Grazier was relieved in Equity against it. 2 *Vern. Rep.* 129.

### *Of Distribution of Estates.*

A Bill to have an Account and Distribution of an Intestate's Personal Estate, is proper in the Chancery; and as to Administration and Personal Estates, the Whole Blood and Half Blood are all one, and shall have an equal Share. 1 *Vern. Rep.* 134, 437.

One by Will gives Legacies to his Children, and an express Legacy to his Executor for his Care therein, and makes no Disposition of the Surplus: Adjudg'd, that the Executor is but a Trustee as to the surplus Estate for the Children, which shall be distributed as if the Person had died Intestate. *Ibid.* 473.

If no Disposition of the Surplus of an Estate, it shall be distributed to the next of Kin; and when decreed to the Executrix, see 2 *Vern.* 677, 678.

### *Of Dower.*

A Deed has been refused to be given in Evidence to bar a Title of Dower. 3 *Ch. Rep.* 94.

If a Wife in Confidence of a fraudulent Agreement, joins in a Fine with her Husband to  
bar

bar Dower, notwithstanding the Fine she shall have her Dower. 1 *Vern. Rep.* 294, 295. But a collateral Satisfaction may be a good Bar to Dower in Equity; tho' not pleadable at Law. 2 *Vern.* 366.

### Of Executors.

**E**Xecutors in Equity may sue one another; and one Executor without the rest, may be sued in this Court, but he shall be charged for no more than he hath, &c. 1 *Chan. Cas.*

In Equity Executors may be intended Trustees, tho' not expressly named as such, and shall accept the Trust, &c. *Finch. Rep.* 432. But the Delivery up of a Bond by an Executor, and taking a new Bond to himself for the Debt, hath been held to be no equitable Conversion to charge the Executor with the Payment of the Money, altho' it is a Conversion at Law: And the Executor was decreed to assign the Bond to the Heir, &c. 1 *Chan. Cas.* 74.

It is said to be a fixt Rule in Chancery, that when an Executor, &c. receives in Money, which was secured to the Testator, if he lends it out for Profit, he shall not account for the Profits thereof, being lent at his Hazard of the Principal, and if that miscarry the Executor shall make it good to the Estate: Tho' it has been otherwise decreed, where the Executor was liable to Debts and Legacies payable *in futuro*. 2 *Chan. Cas.* 21. 152. Money well placed out at Interest,

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Interest, and unnecessarily called in by an Executor, without any Cause, he shall pay Interest for the same. *Finch. Rep.* 457.

Executors must not in Equity pay their own Debts and Legacies first, if there be not enough to pay all the Debts, &c. for all must be paid in Proportion, and not as at Common Law. *3 Ch. Rep.* 54. And an Executor 'tis said may be ordered in Chancery to pay a Debt by Word, before a Debt due by Specialty. *1 Chan. Cas.*

The Executor of an Administrator, pending a Suit in Right of the Intestate to recover Goods, voluntarily pays a Legacy, and afterwards the Goods are evicted from him, whereupon he sues to have back from the Legatee what he had paid, and in Truth he was not bound to pay; he is remediless, because he paid the Money without Compulsion of Suit, knowing the Estate was in Question, and being aware of the Danger of the Action. *2 Chan. Cas.* 9. But 'tis otherwise if the Executor pay a Legacy by Compulsion of Suit. *2 Ch. Rep.* 137. *2 Vern. Rep.* 205.

A voluntary Payment by an Executor, after an Original filed or Bill exhibited in this Court, shall not be allowed: Tho' in the Case of a voluntary Payment, if the Suit at Law be not by Original, but upon a *Latitat* in *B. R.* &c. the Payment shall stand good after Action brought. *2 Vern.* 300.

A Bill may be brought by Creditors against an Executor for the Discovery of personal Estate, before the Will is proved. *2 Vern. Rep.* 49.



*Of Factors.*

A Factor is in Nature of a Trustee only for his Principal ; for tho' he has the Right at Law, yet he is in Equity but a Trustee. 2 *Vern. Rep.* 638.

*Feme Coverts. Vide Baron and Feme.*

*Of Forgery.*

The Crime of Forgery is examinable in the Chancery, and it is said to be most proper to be examin'd in this Court; and forged Deeds are to be kept, so as the King may proceed thereon against the Criminal, and not be torn. 1 *Vern. Rep.* 292, 66:

*Of fraudulent Deeds, &c.*

A Widow having made a Deed of her former Husband's Estate privily without the Knowledge of the second Husband, it was set aside as fraudulent, and the second Husband decreed to enjoy the Lands, it appearing that the second Husband was induced to marry the Woman in Expectation and Confidence of having the Estate, without which he would not have married her. 2 *Ch. Rep.* 84.

For Fraud a Release shall be made void in Equity. And Articles of Agreement, and a Conveyance executed, also a Fine in Pursuance thereof, were set aside for Fraud, and where

## 796 *Of Cases in the Chancery,*

the Party was imposed upon. 1 *Vern. Rep.* 205. If a contingent Remainder is destroy'd by a legal Conveyance, obtain'd by Fraud, Equity will relieve against it; for in this Case it is the same as if no Conveyance had ever been made. 1 *Vern.* 445. A Will concerning Lands, may be set aside in a Court of Equity for Fraud in obtaining it; as if a Man gives the Testator Notes for so much Money if he will devise his Estate to him, and the Notes prove to be forged. 2 *Vern. Rep.* 700. But Fraud in obtaining a Will relating only to a personal Estate, may not be examined in Chancery after the Will is proved in the spiritual Court, so long as that Probate stands in Force. *Ibid.* 9.

A Deed not Fraudulent at first, may become so afterwards, by being concealed, &c. And an honest Debt may be lost by Means of Fraud used to come at it; as one by adding a Seal to a Note, which was good without it, lost his Security. 2 *Vern.* 162.

Where a Bill of Exchange was gain'd by Fraud, on Pretence of a fictitious Demand, &c. Relief was decreed against it, and that the Money should be repaid with Interest and Costs. *Ibid.* 123.

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## *Of Guardians.*

A Guardian may be assign'd by the Court of Chancery for an Infant, or one *Non Compos mentis*, &c.

And

And if an Infant suing by Guardian, come of Age pending the Suit, it shall not abate it, but the Cause is to proceed to Hearing without any Change in the Proceedings. If an Infant will not appear to a Bill, he is to be brought into Court by Order or *Subpœna* to be inspected, and then the Court will appoint him a Guardian, &c. and where the Guardian answers for the Infant, he must be sworn, or the Answer will be quashed. 1 *Chan. Cas.* 164.

Real and Personal Estate being given by Will to an Infant when he came of Age, the Guardian of the Infant brought a Bill against the Executor to have an Account, &c. and it was decreed that he should give Security to account, and to pay what shall appear to be due at the Infant's Age of 21 Years. *Finch. Rep.* 317. A Guardian in Socage may be decreed to account; but not be ordered to give Security 'till some Fault be found in him. 3 *Ch. Rep.* 61.

If a Guardian takes Bond for Arrears of Rent, &c. in his own Name, by this he makes it his own Debt. 2 *Ch. Rep.* 97.

### Of Heirs.

THE Heir of a Person, in some Cases, shall sue and be sued in the Chancery farther than the Law bindeth him: And an Heir at Law is much favoured by this Court; and to be preferred in a doubtful Case. 1 *Chan. Cas.* 7.



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Not only the Heir, in Case he is charged with his Ancestor's Debts, but also a Devisee of Lands, shall be unburthen'd of a Debt lying on the Land, by the Personal Estate in the Hands of Executors or Administrators. 2 *Chan. Cas.* 84. He who is *Heres factus* may pray Aid of the Personal Estate, to discharge the Real; and even an ordinary Devisee shall have that Benefit. 1 *Vern. Rep.* 37.

But where a Man devised his Real and Personal Estate to pay his Debts, and the Personal Estate fell short; it was decreed that the Heir at Law should join with the Executors in the Sale of the Real Estate, and that the Widow of the Testator shall not retain her Jewels as *paraphernalia*. *Finch. Rep.* 415. And an Heir at Law has been decreed to relinquish his Right to a Purchaser of Lands devised to be sold, when he should come of Age. *Finch.* 381.

A Residue of a Term after Debts satisfied, &c. decreed to the Heir. 2 *Ch. Rep.* 296. The Father sold his intailed Lands, but had little for them: It seems the Heir by the Power of this Court, may compel the Purchaser to give the full Worth. 1 *Chan. Cas.* If an Heir sells a Reversion in the Life-Time of his Father, at an Under-Value, a Court of Equity will not decree the Heir to perform a Covenant for further Assurance. 1 *Vernon's Rep.* 271. A Purchase being had of a Reversion from an Heir in his Father's Life-Time at Under-Value, the Heir was relieved and the Purchase set aside; tho' if he had died before his Father, the Purchaser would have lost all his Money; decreed on a Bill

Bill brought by the Heir, charging the Conveyance to be intended only as a Security, and praying to redeem, &c. *Ibid.* 168.

An Heir may be relieved against a contingent Contract, made during his Father's Life, to pay a large Sum of Money if he outlives his Father, when it is unconscionable. 2 *Ch. Rep.* 397. And an Exchange-Man who had for many Years practised upon young Heirs, by selling them Goods at extravagant Values, and to be paid five for one upon the Deaths of their Fathers, was decreed to deliver up Securities thus obtained for Payment of great Sums of Money, on the Plaintiff's paying the Defendant what was his due, and he had really paid to the Plaintiff, and for his Use. 1 *Vern. Rep.* 467.

*See Bargain and Sale.*

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### *Of Infants.*

**A**N Infant shall have the same Relief in Chancery upon a Breach of Trust, Fraud, &c. as any other Person might. And if a Bill be exhibited against an Infant, to examine a Title of Lands descended from his Ancestors, he may by Answer shew his Infancy, and pray Judgment whether the Court will proceed 'till he comes of Age; but for other Matters, the Suit shall proceed against the Infant, notwithstanding his Infancy: And tho' no Proceedings may be had against Infants on a Judgment or

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Statute at Common Law, yet 'tis otherwise in this Court. 1 *Chan. Cas.*

Infants have divers Privileges allowed them in Equity: An Infant by *Prochein amy* may call his Guardian to an Account, during his Minority. If a Stranger enters and receives the Profits of an Infant's Estate, he shall in Equity be look'd upon as a Trustee for the Infant, &c. No Decree shall be made against an Infant, without having a Day given him to shew Cause after he comes of Age. If an Infant Heir be decreed to join with Trustees in the Sale and Conveyance of Lands, he must have a Day after he comes of Age to shew Cause. And where an Infant recovers by Decree of this Court, the Court may with the Approbation of the Infant's Relations, allot him a Maintenance, tho' there be no Provision for it in the Trust, &c. for this is founded on natural Equity. 2 *Vern. Rep.* 342, 429, 236.

This Court upon Application made thereto by Guardians, will settle the Maintenance of Infants. The Plaintiffs being Infants had Legacies given them to be paid at 21 Years of Age; and by their Bill they suggest that they had no Maintenance, and pray that the Defendant, who is Executor of the Will, may allow them Maintenance: The Defendant demurred, for that the Money was not to be paid 'till the Plaintiffs were at Age, and therefore they had no Cause of Suit; but the Demurrer was over-ruled. 1 *Chan. Cas.* 160. 2 *Chan. Cas.* 164.

An Infant may be a Trustee; at 17 Years of Age, he may make a Will, and give Legacies, &c.



&c. and at that Age, take out Letters of Administration: But he cannot commit a *Devastavit* 'till he is of full Age. 1 *Vern.* 343, 255, 328.

*Of Interest Money.*

No Interest will be allow'd in Chancery for Book-Debts, tho' of long Standing. 3 *Ch. Rep.* 65.

Interest Money on a Mortgage is not in Equity allowed to be made Principal, so as to make *Interest upon Interest*: But where Interest is join'd to the Principal in an Assignment, it shall then carry Interest from the Time of the Assignment. 1 *Vern. Rep.* 169. 2 *Vern.* 135.

And Interest has been allowed in Equity for Interest Money, when a stated Sum. 2 *Ch. Rep.* 286.

*Of Jointures, and Joint Purchases.*

Deeds and Writings in the Hands of a Jointress, shall not be discover'd or parted with to the Heir, until her Jointure is confirmed. 1 *Vern. Rep.* 480.

If a Jointress and the Issue of the Husband claim Lands by the same Settlement, and there is a Prior Incumbrance on the Estate, they shall contribute in the Discharge of it; and the Jointress shall not hold over her Jointure, and lay the whole Burthen on the Heir. 2 *Vern.* 440.

Where two Joint Purchasers pay an equal Share of the Purchase Money, this will make them Tenants in Common, in Equity. 1 *Vern.* 361.

*Of Judgments.*

A Man having obtained Judgment against another, may bring a Bill for Discovery and Account of his Goods concealed in the Hands of a third Person, after Execution taken out; but not before. 2 *Vern. Rep.* 399.

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*Of Leases.*

A Lease made for a greater Number of Years than the Lessor had Power to grant, shall be good in Equity for so many Years as he had Power therein. 3 *Ch. Rep.* 11.

The Limitation of a Lease for Years, in Trust for Heirs Male or Heirs general, &c. is void in Law, and where there is no Executor it shall go to the Administrator: But an Assignment of a Lease, with Limitations in Tail, Remainder over in Trust, altho' void at Law, yet has been decreed good in Equity by the Intent. 1 *Ch. Rep.* 16. 2 *Ch. Rep.* 58.

If an Hospital having Power to make Leases for 21 Years, and no longer, grant a Lease for 21 Years with Covenant by Renewal to make up the Term 60 Years, &c. This Covenant is not binding in Equity, as being equally prejudicial to the Hospital as to make a Lease for 60 Years at first. 2 *Vernon's Rep.* 411.

A Lease for Years mortgaged near expired, was renewed by the Mortgagor's Executors; and

and it was decreed that the new Lease allowing the Charges, should be assign'd to the Plaintiff and made subject to the Payment of the Mortgage Money and Interest. *Finch's Rep.* 393, 394.

The Court of Chancery hath often decreed long building Leases of Infant's Estates, where for their Benefit. 2 *Vern. Rep.* 225.

*Of Legacies and Legatees.*

Legacies devised to Children, have been decreed to be paid to the Father, on his giving Security to pay the same to the Children when at Age, &c. And where an Executor paid a Child's Legacy to his Father, who afterwards fail'd, the Payment was allowed good, and the Child had no Relief against the Executor; but this was where the Legacy was not sufficient to bear the Charge of a Suit, and was thought to be a hard Case. 1 *Chan. Cas.* 245. 3 *Ch. Rep.* 165, 166.

If Legacies are given to Children at the Age of 21, or Days of Marriage, they are not due and payable till that Time: And where no Time is appointed for the Payment of Legacies given to Children for Portions, they shall be paid at the Age of 21 Years, or Day of Marriage. *Finch Rep.* 432. A Devise of a Legacy as a Portion to a Child with Interest, but not to be paid until the Child attains the Age of 21, or is married; the Child dies under 21, and unmarried, the Portion was decreed to the Administrator of the Child. 1 *Vern. Rep.* 462. Legacy



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gacy given to a Child payable when 21 Years of Age, the Child dies before, his Administrator shall have the Legacy; but shall wait for it 'till such Time as the Child, if he had lived, would have come to 21. Tho' if by the Will it was to be paid with Interest, it shall be paid to the Administrator presently. 2 *Vern.* 199. And a Legacy given to one to be paid at his Age of 23, and if he dies before, to go over to another; if the first Legatee dies before that Age, the other shall have it presently. *Ibid.* 283.

But one having devised a Legacy to his Daughter for her Portion, charged upon the Real Estate, and payable at her Age of 21 Years, or Marriage; it was decreed, that if she die before, the Portion shall sink in the Land, for the Benefit of the Heir; otherwise, if no Time were limited for Payment of the Money; for in that Case it would go to the Executor or Administrator of the Daughter. 2 *Vern. Rep.* 92, 416. A Devise of a Legacy, to be paid at 21, and a Devise to one at 21, is said to be all one and the same in Equity. *Ibid.* 417.

If a Legacy be generally devised to one to be paid on a certain Day, and the Legatee dies, after the Testator, but before the Day comes; there is such an Interest vested in the Legatee, that the Legacy shall go to his Administrator, *Finch's Rep.* 112. From the Time that Legacies become due and payable, Interest shall be paid: But where the Plaintiff is an Infant, and cannot discharge the Defendant Executors, if they were always ready to pay the Legacy, so as they might be indemnified, on this Plea, they

they shall be decreed to pay it without Interest. *Finch Rep.* 165, 264.

A Legacy is given upon a Contingency, and the Legatee dies before the Contingency happens, the Legacy shall go and be paid to his Executors. *2 Vern. Rep.* 767. And where a Legacy is devised to an Infant to put him out Apprentice, if he dies before he is of competent Age to be placed out, it shall go to the Executor or Administrator of the Infant. *1 Vern.* 255. *Ibid.* 261.

One devises the Sum of 500*l.* due to him from a certain Person, and after the Testator lives to receive the Money; the Legacy was nevertheless decreed. *2 Vern.* 681. A Child entitled by his Father's Marriage Articles to a Share of his Personal Estate, has a Legacy given him by the Will of his Father; if he will have the Legacy and Benefit of the Will, he must wave the Benefit of the Articles, and accept of the one in lieu of the other. *Ibid.* 556. And a Person having given his Daughter 200*l.* by Will, afterwards gave with her in Marriage in his Life-time a Portion greater than the Legacy; the Portion was decreed an Extinguishment, and in Satisfaction of the Legacy. *Ibid.* 115. If a Man gives a Bond or Note for Money, and afterwards that Sum is given by the same Person's Will to the same Person, without taking any Notice of the Bond, &c. the Devise shall be taken to be in Satisfaction of it. *Ibid.* 498.

The Legatee upon a Bill in this Court, shall refund; and that even of a Legacy in Specie,

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2 *Chan. Cas.* 257. But it hath been held, that a specifick Legacy ought not to be subject to any Abatement in Equity, though the Estate fall short to answer the other Legacies. *Finch. Rep.* 304. A specifick Legatee shall not abate in Proportion with pecuniary Legatees, on Deficiency of Assets; as to which latter, a Creditor may compel them to refund, &c. 1 *Vernon's Rep.* 94.

Legacies are not within the Statute of Limitations; and Length of Time is only a Presumption of Payment. 1 *Vern.* 256. A Legacy shall be presumed to be paid after 30 Years Time, &c. 2 *Vern.* 22, 23,

### *Of Letters written.*

A Bill may be brought for Discovering the Contents of a Letter, which would discharge the Plaintiff of an Action at Law, before Verdict, but not after. 3 *Chan. Rep.* 17.

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### *Of Marriage.*

ONE by Letter says he will give 1500 *l.* Portion with his Daughter, the Daughter marries, and the Father is privy to it, seeming to approve thereof; he was decreed to pay the Portion. 2 *Vern. Rep.* 322. 2 *Chanc. Rep.* 286.

But where a Person by Letter under his Hand promised 1000 *l.* with his Niece, and in the



same Letter dissuaded her from marrying the Plaintiff, though he was afterwards present at the Marriage, the Court would not decree the Payment of the Money, but left the Plaintiff to his Action at Law. 2 *Vern.* 202.

On a Treaty of Marriage, Proposals in Writing were sent to the Friends of the Woman relating thereto; now although no Answer was returned, yet the Acceptance of the Proposals, and Admission of the Man to be a Suitor, upon which the Marriage ensued, this in Equity amounts to an Agreement executed on all Sides. *Finch's Rep.* 147.

That which is the open and publick Treaty and Agreement on Marriage, shall not be lessened or infringed by any private Agreement: And private Agreements to pay back Money, assign Lands, Mariage-Brocage Bonds, &c. shall be set aside as fraudulent and deliver'd up. 2 *Vern.* *Rep.* 466, 500, 764.

If there be an Agreement and Bond to the Wife, before Marriage, to leave her 1000*l.* notwithstanding the Agreement, &c. be released and extinguished at Law, by the Marriage; it is good in Equity, and shall bind the real Assets, which she may hold over 'till satisfied. 2 *Vern.* 480. But a Promise, after Marriage, by a Husband to a Wife, to pay her Money, is void and not relievable in Equity. 1 *Chanc.* *Rep.* 60.

A Devise of a Portion, the Legatee marrying with Consent of the Executors, &c. though she married without such Consent, the Portion was decreed to her with Interest; but the Husband was

## 808 *Of Cases in the Chancery,*

was not to have any Power to dispose thereof, without first making a suitable Provision for the Wife. *Finch. Rep.* 145. In these Cases, if the Legacy be not devis'd and limited over, it is only *in Terrorem*: But where the same is devised over, it shall go there. As Lands are given by Will on Condition that the Devisee marry with Consent of certain Persons, and if she do not, then the Lands are limited to another and his Heirs; if the Devisee marries without such Consent had, the Land shall be decreed to the Remainder-man, and the Woman not be relieved. *1 Vern. Rep.* 20. *2 Vern.* 293, 357. *2 Chan. Rep.* 28.

Whenever a Husband comes into a Court of Equity, for his Wife's Portion, the Chancery will oblige him to make a Settlement on her, or to secure her a Maintenance in Case she outlives the Husband: And in all Cases where a Man makes a Settlement equivalent to his Wife's Portion, it shall be intended that he was to have the Portion. *2 Vern. Rep.* 494, 502.

### *Of Mortgages.*

A new Mortgage of Lands has been decreed, where a former was defective, the Land being still chargeable in Equity. *Finch. Rep.* 29. It is a general Rule, once a Mortgage and always a Mortgage. And no Assignee of a Mortgage shall be in a better Condition than the Mortgagee, unless the Mortgagor come into the Assignment. *3 Chan. Rep.* 79.

Relief

Relief was given in Equity against an old Mortgage, where no Demand was made upon the same in forty Years; and the Plaintiff Mortgagor decreed to hold the Premises, and a *Vacat* to be enter'd on the Inrollment of the Mortgage. 1 *Chan. Rep.* 105, 106. Mortgage Money shall be presumed to be satisfied on a sleeping Mortgage, where the Lands go into other Hands by Purchase, and no Notice given of the Mortgage or Claim to the Land, &c. and the Mortgage Deed be deliver'd up and cancelled. *Ibid.* 60. And it hath been held, that if a prior Mortgagee conceals and denies his Mortgage to a second Mortgagee, before he lends the Money, on his Telling the first that he was about to lend it, the Estate in Equity shall stand charged in the first place for the second Mortgagee's Debt. 2 *Vern. Rep.* 554.

As to *Equity of Redemption* of Mortgages; a second Mortgagee may redeem the first. 2 *Vernon Rep.* 601. And a Mortgagor was admitted to redeem a Mortgage of 60 Years Standing, where the Length of Time was answered and excused by Infancy, Coverture, an Account made up 30 Years before, &c. But denied in a like Case, by Reason of the Difficulty of the Account and great Length of Time, &c. *Ibid.* 377, 418. A Mortgagor had Liberty to redeem before the Day of Payment in the Deed; where the Lands were conveyed to the Mortgagee conditionally at so much Rent, and the encreasing Rent exceeded the Interest of the Money before the Day, and it being an unreasonable Bargain. 1 *Vern. Rep.* 183, 184.

A Plain-



## 810 *Of Cases in the Chancery,*

A Plaintiff was decreed to redeem a Mortgage, after a Release of Equity of Redemption by his Father, on its Appearing by Letters, &c. that the Mortgagee offer'd a Redemption, upon Payment of Principal and Interest. *Finch's Rep.* 284. And though a Decree to foreclose Equity of Redemption was sign'd and inrolled, and a Purchase made under it, yet another Person was allowed to redeem, on the Circumstances of the Case. *Finch* 406, 409.

Where there is a Debt secured by Mortgage, and also a Bond-Debt, the Mortgagor or his Heir shall not redeem the Mortgage without paying the Bond-Debt too, if the Heir be bound. 1 *Vern. Rep.* 244. 2 *Chan. Rep.* 23. Creditors on Judgments and Bonds, have been decreed to redeem Mortgages, towards Satisfaction of their Debts. 2 *Chan. Rep.* 396.

A Mortgage made by a Man subsequent to his Will, or after a Settlement of Lands, with Power of Revocation, shall be a Revocation *pro tanto* only in Equity, and not of the whole Will or Settlement. *Ibid.* 97, 141.

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### *Of Notice.*

Notice to a Lender's Agent of Money lent before, is Notice to the Lender; and they that lend last must be satisfied last, having Notice of what was before lent. 2 *Vern. Rep.* 574.

A Pur-

A Purchaser of Lands, without Notice of an Incumbrance, shall not be hurt thereby in Equity. 2 *Vern. Rep.* 600. But if a Trustee sells Land to a Stranger, who hath no Notice of the Trust, and though a Fine is levied, &c. it alters not the Trust Estate in the Land. 1 *Vernon* 60. 2 *Chan. Rep.* 124. And a Purchaser by taking a Conveyance from a Trustee, with Notice of the Trust, becomes the Trustee himself. 2 *Vern.* 271.

Equity is very careful not to impeach Purchasers by presumptive Notice. *Ibid.* 159.

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### Of Patents.

AN Information by *English* Bill, may be brought for setting aside a Patent unduly obtained, where it is not reverfable by *Scire facias*. 2 *Chan. Rep.* 357.

### Of Perpetuities.

On its being insisted by Council, that there was a Difference in Equity between the Limitation of the Trust of a Term and a Devise or Limitation of a Term it self, in Favour of a Perpetuity; it was decreed that the Rules of Law must be observed in this Case, and the Lord Keeper declared that a Perpetuity is a Thing odious in Law and destructive to the Commonwealth, for that it would put a Stop

## 812 *Of Cases in the Chancery,*

to Commerce, and prevent the Circulation of the Riches of the Kingdom, and therefore is not to be countenanced in Equity. 1 *Vern. Rep.* 164.

If a Lease for Years be limited in Tail, with Remainders over; or a Settlement made of a Lease, in Trust for the first, second and other Sons for Life, and after to Daughters, &c. (not *in esse*) it is void, and vests in the Executor. 1 *Chan. Rep.* 178, 231. But the Trust of a Term is limited to *A. B.* for Life, Remainder to his Wife for Life, Remainder to their eldest Son, and if he die leaving Issue, then to such Issue; but if the Son die, in the Life-time of the Father or Mother, without Issue, then to the second Son: This Remainder, has been adjudg'd good. 1 *Vern.* 304, 305.

*Vide* more under *Leases.*

### *Of Personal Estate.*

Personal Estate of a Testator is to be first applied for Payment of his Debts; and if that falls short, then the Rents of the real Estate: And if the real Estate be expressly charged with the personal Estate, for Payment of Debts, if the personal Estate is sufficient, the real shall be discharged; and the real Estate will draw in the personal to account at any Time, because the personal Estate ought to go in Ease of the real Estate. *Finch. Rep.* 433, 458.

If Lands only are order'd by Will to be sold for Payment of Debts, &c. the personal Estate shall



shall not be subject thereto, but the Lands be sold for that Purpose. *Ibid.* 414.

*Of Possession and Possibility.*

A long quiet Possession and Enjoyment will presume an Agreement for the Thing in Demand. 2 *Vern. Rep.* 391.

The Rent of a Copyhold Estate was decreed to a Lord of a Manor, though the Estate was held of another Manor, where the Plaintiff had no other Evidence of his Title to the Rent but that it had been paid him for near 20 Years: And after a Payment of 20 Years, a Grant shall be presumed. 2 *Vern.* 516, 517.

A Possibility cannot be assigned in Equity; but it may be released. *Ibid.* 563.

*Of Proceedings in Equity.*

If a Cause has slept twelve Months, there can be no Proceedings had in it without first serving a Process of *Subpæna ad faciend. Attornatum.* 1 *Vern. Rep.* 172.

When a *Cepi Corpus* is once return'd by the Sheriff on an Attachment, there is an End of all Process; but you ought to move that the Defendant may enter his Appearance and be examined in four Days, or stand committed. 1 *Vern.* 344, 345.

One Defendant in a Cause is in Contempt, and stands out to a Sequestration, and the Cause is heard against the other Defendants; yet he

## 814 *Of Cases in the Chancery,*

may come in and answer, and the Cause proceed and be heard again as to him. *Ibid.* 228.

### *Of Purchasers.*

In Pleading a Purchase, the Defendant ought to deny Notice of Incumbrances, &c. A Purchaser came into a Man's Study, and there laid Hands on a Statute which would have fallen on his Estate, and put it in his Pocket; and having thereby obtain'd an Advantage at Law, though by so ill a Practice, it is said the Court of Chancery would not take that Advantage from him. 1 *Vern. Rep.* 52, 53, 179.

A Purchase of Tenant for Life, who was outlawed and absconded, &c. set aside in Favour of Creditors. *Ibid.* 465.

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### *Of Recoveries.*

THE Chancery has decreed to what Uses a common Recovery of Lands shall operate, on its being uncertain by the Deeds and Conveyances of the Lands. 1 *Chan. Rep.* 98.

A common Recovery suffer'd, or Fine levied by *Cestui que Trust* of an Estate-Tail, has the same Effect in Equity to bar the Intail and Remainders, as it would have at Law, in Case a legal Estate was in him. 1 *Vern. Rep.* 440.

Of Releases.

A Release shall be avoided for Fraud, where there is *Suppressio veri*, or *Suggestio falsi*: Also a Release may be set aside by Reason of the Misapprehension of the Party that gave it, as well as when fraudulently obtained. 1 *Vernon* 20, 32.

Of Rent.

A Rent may be apportioned in Equity, where it cannot by Law. 3 *Chan. Rep.* 11.

In Case of *Incroachment* of Rent, if the Tenant makes Payment of more than his due, he shall never go back from it. 2 *Vern. Rep.* 517. The Payment of a Rent, which had been discontinued for some Years, on a Conception that the Lease was lost, was decreed both what was in Arrear, and the future Rent. *Finch. Rep.* 256.

Of Revocations.

Equity may supply an informal or defective Revocation, by a solid Act done *animo revocandi*, though it hath not all the Circumstances mentioned in the Power of Revocation; but it cannot make a Revocation where there is none. 2 *Vern.* 69, 70.



*Of Sequestrations.*

If a Decree and Sequestration is had against one for a personal Duty, and he dies, it shall not be revived against his Heir; for the Sequestration determined by the Party's Death. 2 *Ch. Rep.* 244.

*Of the Statute of Limitations.*

If the Statute of Limitations attaches a Demand, pending a Bill in Equity, and the Bill is dismiss'd, the Matter being properly determinable at Law; yet the Court of Chancery will not suffer the Statute to be pleaded. 1 *Vernon's Rep.* 73.

*Of Sureties and Bail.*

The Principal in a Bond being arrested gave Bail; and Judgment is had against the Bail: Now on a Bill by the Original Sureties, who had been sued thereon and paid the Money, it was decreed that the Judgment against the Bail should be assign'd to them, in Order to reimburse them what they had paid with Interest and Costs; for the Bail stand in the Place of the Principal, and cannot be relieved but on Payment of the Money. 2 *Vern. Rep.* 608, 609.

*Surrenders. Vide Copyhold Estates.*

*Of Trials and Issues at Law.*

A Trial at Law was directed on an Issue out of Chancery, whether a Judgment was satisfied, or not; and after the Trial, to resort to the Court upon the Equity reserved. *Finch's Rep.* 4. And a new Trial and Issue at Law has been order'd, on Payment of Costs; after a former Trial and Issue had, and the Cause being set down upon the Equity reserved. *2 Vern. Rep.* 75. Also a new Trial at Law hath been directed by the House of Lords, after an Issue tried and Verdict, when denied in the Chancery. *Ibid.* 378.

An Issue at Law was order'd by this Court in a Matter, where the Plaintiff had a proper Action at Law, and was under no Impediment of bringing such Action; and though it was insisted that there was no Reason for a Court of Equity to meddle in it: But this has been also denied. *2 Vern. Rep.* 503, 504.

*Of Trusts.*

Trustees have been decreed to account, and also to give Security to perform the Trust, &c. on reasonable Grounds that they would not perform it: One Trustee has been order'd to relinquish to another, &c. and Trustees may be compelled to accept or transfer the Trust. *Finch's Rep.* 262, 360, 380.

## 818 *Of Cases in the Chancery,*

A very supine Negligence may in some Cases charge a Trustee with more than he receives; but the Proof must be very strong. 1 *Vernon's Rep.* 144. A Trustee having broke his Trust, by delivering up a Bond to another, and taking Security to save himself harmless, was decreed to pay the Money and Interest. *Finch. Rep.* 242.

Where there is a Trust, the Trustees shall have their Costs and Charges, and all just Allowances in managing the Trust; but not any Thing for their Care and Pains. *Finch. Rep.* 362. If a Trustee or Mortgagee manage the Estate themselves, no Allowance shall be made them for their Pains; but if they employ a Bailiff, and give him a yearly Salary, that must be allowed. 1 *Vern. Rep.* 316.

A Man makes his Wife Executrix, but the Son prevails on his Mother to get the Father to make a new Will and name him Executor, he promising to be a Trustee only for his Mother: And this Trust was decreed notwithstanding the Statute of Frauds, though no Trust was declared in Writing; and the Party order'd to be examined on Interrogatories for Discovery of the Estate. 1 *Vern.* 297.

*Vide Notice.*

*Of*



*Of Waste.*

A Person on Marriage of his Son, settles a capital Messuage upon himself for Life, without Impeachment of Waste, Remainder to his first and other Sons in Tail, &c. The Father, though his Estate be for Life *Sans* Waste, cannot pull down the capital Messuage, nor commit any voluntary Waste therein; if he doth, the Court of Chancery will grant an Injunction to stay it, and oblige the Father to put the Messuage in as good Repair as at first. *2 Vern. Rep.* 738.

*Of Wills.*

A Will speaks not 'till the Death of the Testator; but the Construction of Wills is to be made as Matters stood at the Time of making them. *2 Vern. Rep.* 653. The equitable Construction of Wills is according to the Intention of the Makers: And Evidence hath been admitted in an extraordinary Case, to explain a Testator's Intent in a Will; where the Words were doubtful, and might be taken one Way or another. *1 Ch. Rep.* 83, 250, 268. *3 Ch.* 176.

By Will, a Person may take as well by a Description, as by a Christian or Surname, where the Intent of the Testator is evident as to the Person he design'd to succeed to his Estate. *2 Vern. Rep.* 732. If a Devise of Money be in Trust for a Man's Children, the Children on-

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## 820 *Of Cases in the Chancery, &c.*

ly shall take and not Grandchildren; but if there be no Child living at the Death of the Testator, the Grandchildren shall take, for in such Case the Grandchildren, *i. e.* Children of Children may take by the Devise. *Ibid.* 107, 108. But a Devise of Lands to *A. B.* and the Heirs of her Body, who dies in the Life-time of the Testator, leaving Issue; the Devise is void, and the Issue cannot take as Heir, because the Mother so dying, the Estate was never in her. *Ibid.* 722.

A Devise of all a Man's worldly Estate, comprizes all his Estate, real and personal. But Mortgages in Fee, tho' forfeited when a Will is made, do not pass by a general Devise of Lands, &c. 2 *Vern.* 625, 691. Mortgagee in Fee devised the mortgaged Lands, &c. to *A. B.* for Life, Remainder to *C. D.* in Fee; it was decreed, that *A. B.* should have one Third, and *C. D.* the two other Thirds of the Mortgage Money, &c. 1 *Vern. Rep.* 70. So if Lands incumbered with Debts be given to one for Life, Remainder to another in Fee, they shall pay such proportionable Shares of the Debts. 2 *Vern.* 267.

Where there is a Devise of a Sum certain, to be raised out of Profits of Lands; if the Profits will not amount to raise the Sum in a convenient Time, the Court of Chancery will Decree a Sale. 1 *Vern.* 256.

A general Clause in a Will shall not in Equity prejudice a particular Devise. 1 *Ch. Rep.* 145.

*Of*

*Of Fees of the Court of Chancery,  
as regulated and established by Sta-  
tute, Orders of Court, &c.*

*Fees to the Masters in Chancery.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR all Copies of Charges } and Discharges brought in } before the Master, for Schedu- } ling and Writing, &c. <i>per Side</i> }	0	00	06
For every Affidavit taken	0	01	00
For the Master's Summons	0	02	00
For every Report or Certificate, } made in Pursuance of an Or- } der upon Hearing of a Cause }	1	00	00
For every other Certificate or } Report, made on Petition or } Motion only }	0	10	00
The Clerk's Fee for Writing e- } very Report or Certificate }	0	05	00
For the Drawing and Ingrossing } of Deeds, each Skin }	0	10	00
For the Master's Hand to the } Allowance of every Deed }	0	02	06
For the Allowance of every Re- } cognizance, Affidavit, &c. to } be acknowledged and taken in }	0	02	06
For the Acknowledgment of e- } very Deed to be inrolled }	0	02	00

For



	<i>l.</i>	<i>s.</i>	<i>d.</i>
For an Examination Fee	0	02	06
For every Exhibition signed by a Master	0	02	06
For the Caption of every Recognizance	0	02	00
The Clerk's Fee for Writing the Recognizance and Condition	0	02	06
For every Exemplification examined by two Masters, to each of the Masters for every Skin of Parchment	0	02	00
For every Bill of Costs to be taxed by a Master, for the Defendant's Non-appearance, or the Plaintiff's not proceeding to reply, &c.	0	02	06
For the Copies of Depositions, for each Side	0	00	08

*Fees to the Six Clerks.*

For an Attachment	0	02	10
For breaking it up with the Sheriff, and his Warrant thereupon	0	02	04
For every Attachment with Proclamations	0	11	00
For every <i>Supersedeas</i> for the Discharge of any Commission, or Writ made in the Six Clerk's Office.	0	06	08
And for a <i>Supersedeas</i> of Privilege	0	06	08

For

# Court of Chancery.

823

d.		l.	s.	d.
06	For every Special <i>Certiorari ad</i>			
06	<i>Procedend. Hab. Corpus cum</i>	0	02	00
00	<i>Causa</i> , or Matter of Privilege			
00	For all <i>Certiorari's</i> or <i>Proceden-</i>	0	02	00
06	<i>do's</i> of Course			
00	For Copies of Bills, Answers, &c.			
06	and of all Certificates, and Exa-			
00	minations, made or taken by			
06	Virtue of any Commission out			
08	of this Court, or of any Inter-			
	rogatories therewith return'd;	0	00	08
	and also of all Declarations, or			
	Pleadings, as well by English			
	Bill, as according to the Course			
	of the Common Law; and for			
	Copies of Records, Rolls or E-			
	vidences, for every Sheet con-			
	taining 15 Lines			
	For every Term the Cause is in			
	Agitation, of every Client for	0	03	04
	first Appearance			
10	And if upon the first Appearance			
04	each Defendant appears several-			
00	ly by himself, he is to pay the	0	03	04
	like Fee; but every Term af-			
	terwards, there is only a term-			
	ly Fee to be paid of			
08	For every Commission to take an			
08	Answer, or examine Witnesses;	0	06	08
	and if joint, then to each At-			
	torney			

For

For

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every Commission of Rebellion, or Special Commission by Order of Court	0	10	00
For Ingrossing every Bill in Chancery Hand, where any Answer is to be made by Commission, <i>per Sheet</i>	0	00	06
For the Drawing and Inrolling of every Decree and Dismission	1	13	04
And if the Decree, &c. be above the Length of a Skin of Parchment, there is usually paid to the Clerk for Drawing, for every Sheet containing 16 or 17 Lines, and the like for Inrolling <i>per Sheet</i>	0	00	08
For every Writ of Execution of a Decree, after the Rate of every Skin	1	06	03
For an ordinary Writ of Execution on an Order	0	06	08
For Drawing and Ingrossing every Injunction	0	13	04
For Writing the Exemplification of Records, <i>per Skin</i>	1	06	08
For the Writing of every Sheriff's Patent, Writ of Assistance, Writ of Discharge, <i>Dedimus Potestatem</i> , the Attorney's Fee therein, Warrant of Attorney and Oaths	1	10	08

For



	l.	s.	d.
For Inrolling of all Warrants, whereby any Patents, Commissions, Licenses, Pardons, Leases, Grants, &c. do pass under the Great Seal, after the Rate of every Skin	1	00	00

*Fees to the Under-Clerks.*

For every Attachment	0	01	00
For every Injunction	0	06	08
For an ordinary Commission, &c.	0	03	02
For a Commission of Rebellion	0	04	00
For every <i>Dedimus Potestatem</i>	0	02	08
For the Transcript of a Bill annexed to the <i>Dedimus Potestatem</i> , per Sheet	0	00	06
For all Copies of Bills, Answers, Pleas, &c. for every Sheet	0	00	04
Out of the termly Fee to the Six Clerks	0	01	04
For every Decree, per Skin	0	16	04
For a Writ of Execution of a Decree	0	13	02
For every Writ of Execution of an Order	0	03	02
For all Exemplifications, per Skin	0	12	08

*Note* ; These Fees are allowed by the *Six Clerks* to be retain'd by the *Under-Clerks*, with a *Moiety* of all Fees of other Writs, &c. and the *Under-Clerks* are accountable to the *Six Clerks* for their Fees.

But

l. s. d.

But by a late Statute no Transcript  
of Bills is to go with the *Dedi-*  
*mus* or Commission for Taking  
the Defendant's Answer, but in  
Recompence thereof the sworn  
Clerks shall have the termly  
Fee of

0 03 04

And also the whole Fees of all small Writs  
by them made out,

*Fees to the Register.*

For Drawing all Orders *per Side*,  
whereof to the Master of the  
Office 2 s. and to the Deputy  
for his Attendance in Court  
and taking the Minutes, &c. 1 s.

0 03 00

And for Orders by Consent, not  
by Motion, Petition or Hearing,  
to be paid 3 s. by the Plaintiff  
and 3 s. by the Defendant, for  
every Sheet

0 06 00

For entring all Orders, *per Side*

0 01 00

For Copies of all Orders and Re-  
ports, to the Deputy, *per Side*

0 00 06

To the Master of the Office for  
Signing all such Copies, for  
each Side

0 00 06

For Filing a Report

0 00 04

For Entring a Cause for Hearing

0 01 00

For making Notes of Causes that  
stand for Hearing, for ground-  
ing the *Subpana* to hear Judg-  
ment

0 08 00

For

# Court of Chancery.

827

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every Decree, to the Master	0	05	00
For every Dismission	0	05	00
For all Certificates, each	0	00	06
To the Master of the Office for } his Hand thereto	0	01	00
For a Search in the old Books for } any Order or Decree, for every } Year	0	00	04
For Filing every Election	0	00	04
For all Rules of Court to reply, } to produce Witnesses, and for } Publication, &c.	0	00	04
For Entry of all Rules of like } Nature by Consent	0	00	08
For Entry of Amercements	0	01	00
For Entry of all Appearances in } Contempts, &c.	0	02	10
For Entry of all Demurrers	0	01	00
For Entry of Dismissions for Want } of a Replication, on the gene- } ral Rule	0	01	00
For Entry of all Attachments and } Proclamations, each	0	00	02
For all Copies of Attachments, } Proclamations, Commissions of } Rebellion, Rules, &c. <i>per Side</i>	0	00	04

## *Fees to the Register of Affidavits.*

For Filing every Affidavit	0	00	04
For Registering of all Affidavits, } each Side	0	00	04

H h h

For



	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the Copy of every Affidavit, <i>per Side</i>	0	00	04
For the Register, or his Deputy's Hand to every Copy	0	01	00
And for every Certificate, with the Register's Hand	0	01	00

*Fees to the Examiners in Court.*

For Examination of every Deponent	0	11	06
For the Examination of every De- ponent abroad, unto whom the Examiner is required to travel, extraordinary	0	10	00
For certifying of any Deed or Writing shewed to the Depo- nent at his Examination, and for other Certificates	0	02	06
For Copies of all Manner of De- positions, every Sheet	0	01	00
For the Examining of all Copies that are to be given in Evi- dence in other Courts, with the Originals, if the Party re- quire the same	0	10	00
For the Exemplification of Depo- sitions taken by them as Exa- miners, after the Rate of <i>per</i> Skin	1	06	08

Out of these *Fees*, there is an Allowance to the Clerks who dispatch the Business of their Clients in that Office.

*Fees*

*Fees to the Clerk of the Subpœna Office.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every <i>Subpœna</i> to answer	0	02	00
And if two or three Defendants	0	03	00
For the Seal	0	00	06
For the King's Duty	0	01	00
For a <i>Subpœna</i> to rejoin	0	02	06
For a <i>Subpœn. ad audiend. Judic.</i>	0	02	06
For a <i>Subpœna sup. Ordin.</i> to shew Cause	0	07	02
For a <i>Subpœn. ad Execution. Or-</i> <i>din.</i>	1	00	00

*Fees to the Officers of the Petty-Bag.*

For Drawing and Ingrossing all Declarations, <i>per</i> Sheet	0	00	08
For Entering the Rule to answer with the Six Clerks, and on the Petty-Bag Roll	0	02	00
For Entering every peremptory Rule to answer, reply, &c.	0	01	00
For Entering a common Impar- lance with the Six Clerk, and in the Petty-Bag	0	01	00
For Entering every Special Im- parlance	0	02	00
For Drawing and Ingrossing every Confession of a Judgment	0	02	00
For Signing, Entering, and ma- king up the Records of every Judgment	0	10	00

- H h h 2

And

	<i>l.</i>	<i>s.</i>	<i>d.</i>
And otherwise, as the Business } may be in Length, for each Skin }	1	06	08
For ingrossing the Record of an If- } sue, or Demurrer, <i>per</i> Skin }	1	06	08
For every Continuance	1	00	00
For every <i>Venire fac.</i> to the Ma- } ster of the Rolls }	0	06	8
For the Writ and Seal	0	10	06
For every ordinary <i>Scire fac.</i> and } Seal }	0	05	06
For all special Commissions of En- } quiry, <i>Scire fac.</i> to revoke Let- } ters Patents, <i>Sci. fac. ad Compu-</i> } <i>tand. Audita Querela</i> , Re-extent, } and all Judicial Writs }	0	12	06
And otherwise, as they may a- } mount in Length, for every } Skin }	1	06	08
For every <i>Liberate</i> upon a Sta- } tute Staple, to the Master of the } Rolls }	0	13	04
For Drawing and Ingrossing that } Writ, Enttring and Filing the } Extent and Statute, and for the } Seal }	1	03	06
For Drawing all Special Writs, } Commissions, Records, and } Pleadings, <i>per</i> Sheet }	0	01	00
For entering the Vacate of every } Judgment or Statute Staple, } and Search }	0	11	04

For



# Court of Chancery.

831

	l.	s.	d.
For every <i>Ded. Potestat.</i> to take Acknowledgment of Satisfaction of such Judgment, &c. in the Country	1	06	08
For ingrossing, acknowledging and filing every Bail	0	06	08
For every Term for every Cause while depending	0	03	04
For taxing every Bill of Costs	0	02	00
For a <i>Certiorari</i> to remove an Act of Parliament	0	10	06
For every <i>Certiorari</i> to remove Records into another Court, and also for the <i>Mittimus's</i> to send such Records	0	04	02
For the Transcript of such a Record, <i>per Skin</i>	1	06	08
For filing all judicial Writs, special Commissions, Commissions to swear Justices of Peace and Sheriffs, Decrees upon the Stat. of charitable Uses, &c. and for Entry	0	02	06
For searching for every Record, and taking it down	0	01	04
For the Copies of each Record, <i>per Sheet</i>	0	00	08
For Copies of all Commissions of Lunacy, Ideocy, and <i>Post Mortem</i> , each Sheet	0	00	08
For the Officer's Hand to the Examination of every Record	0	02	00

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For Drawing and Signing every Certificate, under the Officer's Hand	0	02	06
For every Attachment of Con- tempt, or Proclamation	0	02	10
For every Commission of Rebel- lion	0	18	08
For every Injunction	1	02	06
For every Commission to examine Witnesses	0	04	10
For every Roll for Publication, and entering it	0	01	00
For every Decree or Confirmation upon the Statute of charitable Uses	1	06	08
If long, then for Drawing, and al- so for Inrolling, each Sheet	0	00	08
For every Examination of such Decrees	0	06	08
For the Writ of Execution of an Order or Decree on the Stat. Charitable Uses	0	10	06

*Fees of the Habeas Corpus Office.*

For Allowance of the <i>Habeas Cor-</i> <i>pus</i>	0	02	04
To the Tipstaff for bringing the Defendant into Court	0	06	08
To the Deputy Marshal for his Fee	0	03	04
To the Six Clerk to present the Prisoner to the Court	0	03	04

To

# Court of Chancery.

833

	l.	s.	d.
To the Warden of the <i>Fleet</i>	0	06	08
And if he be brought up with his Causes, then is to be paid for transcribing the first Cause	0	04	00
For every Cause more	0	02	00
To the Clerk of the Petty-Bag for entring his Causes, for the first Cause	0	04	00
And for every other Cause	0	02	00
The Marshal's Fee for the Party's Discharge	0	17	00

## Fees to the Clerk of the Crown in Chancery.

For every ordinary Commission of the Peace to Justices	1	15	00
For a Commission of Lieutenancy	3	10	00
For a Commission of Oyer and Terminer	1	16	10
For a Commission of Gaol-Deli- very	1	16	10

But for the Commissions of Oyer and Terminer, Gaol-Delivery, Assise, &c. for the Circuits, renewed twice every Year, there is only 1 s. paid by the Clerk of Assise to the Clerk of the Crown.

For a Commission of Sewers, and Writs	3	00	00
For a Commission of Policies of Insurance among Merchants	1	13	04
For a Commission of Charitable Uses	1	06	08



	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a Special Pardon, to the Clerk of the Crown	1	10	04
To the Under-Clerks for Writing, each Skin	0	10	00
For the Creation of a Duke, or Marques	10	00	00
For an Earl, or Viscount	6	13	04
For a Baron	5	00	00
And to the Clerks for Writing, usually about Half as much			
For a Baronet	3	00	00
For every Writ of Summons of a Lord to Parliament	1	06	08
For a Writ of Election of a Mem- ber of the House of Commons	0	13	04
For the Return of the Writ, if Knt. of a Shire	0	04	00
For a Burgefs	0	02	00
For a Certificate	0	02	06
For a Writ to call a Serjeant at Law, &c.	0	13	04
For Writs of Extent and other in- ferior Writs	0	06	08
For every extraordinary Commif- sion <i>pro Rege</i> , by Bill allow'd by the Lord Chancellor, for e- very Skin	1	06	08

*Fees to the Clerk of the Hamper.*

For every Writ of Assise, the Fine paid to the Clerk of the Ham- per is	2	00	00
---	---	----	----

For

l. s. d.

For every Writ of Plea of Land,  
 which is a *Pracipe quod Red-*  
*dat*, (unless Writs of Right Pa-  
 tent) where the Yearly Value  
 of the Land is five Marks, and  
 so according to that Rate for  
 any greater Yearly Value, a Fine  
 ought to be paid of

0 06 08

But now the Course is, for every  
 original Writ, in which the  
 Debt or Damage amounts to  
 more than 40*l.* to pay a Fine  
 into the Hamper, *viz.* from 40*l.*  
 to 100 Marks

0 06 08

From 100 Marks to 100*l.*

0 10 00

From 100*l.* to 200 Marks

0 13 04

From 200 Marks to 400 Marks

0 16 08

So for every 100 Marks more

0 06 08

And for every 100*l.* further

0 10 00

If the Debt or Damage exceed not 40*l.* no  
 Fine is paid.

*Fees to the Clerk of the Faculties.*

For every Dispensation, Licence,  
 Faculty, &c. granted by the  
 Archbishop, (formerly granted  
 by the See of *Rome*) and con-  
 firmed by the King, being of the  
 greatest Importance, the Fine or  
 Tax is

4 00 00

And

# 836 *Of Fees of the Court, &c.*

*l. s. d.*

And if the Tax be under 40 <i>s.</i> but not under 26 <i>s.</i> 8 <i>d.</i> it shall be divided between the King and the Archbishop, who is to al- low Half his Part to his Com- missary, and the Clerk of the Chancery shall have thereout	}	0 02 00
If it be under 26 <i>s.</i> 8 <i>d.</i> and not under 20 <i>s.</i> the King is to have Half, and the Archbishop to have Half, whose Part is to be divi- ded between the Archbishop, his Commissary, and Register, a- bating out of the whole for the Clerk in Chancery	}	0 02 00

And if it be under 20*s.* the same shall be  
divided equally between the Clerk of the Chan-  
cery and the Archbishop's Commissary.

**F I N I S.**



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NOTE; By *Orders of Court* of the 9th of *July* and 27th of *January*, 1725. No Cause shall be set down for *Hearing* 'till after Publication, and unless the Six Clerk Attorney in the Cause certify that he hath seen the Depositions publish'd; nor the same Term that Publication passeth, except on Affidavit that it will be to the Prejudice of either Party to wait for it: And if the Plaintiff doth not apply for *Setting down the Cause* the Term after Publication, the Defendant may afterwards have it set down, &c. Petitions for *Rehearings*, and for *Appeals* from *Decrees* of the *Master of the Rolls*, are to be presented in a Month, or shall not be granted. And Applications for rectifying Mistakes in *Minutes*, to be within a Week.



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